

9 A I'd have to refer that to Ms. Smith
10 Q Okay. There's a meet point between
11 CenturyTel and Southwestern Bell on Wonder World
12 Drive in San Marcos. Right?
13 A Correct.
14 Q And that is the meet point for
15 CenturyTel's facilities that carry ELCS trunks
16 and the facilities that carry toll traffic
17 Right?
18 A Correct. And other circuits.
19 Q And other circuits. Let's talk a
20 little bit about what's -- by the way, it's in a
21 hut. Right?
22 A Well, I guess that's what you call it.
23 Q We call it a hut.
24 A We can call it a hut. That's an old
25 Bell term, "toll hut."

0537

1 Q It's in a small building?
2 A It's a small building. It's not a
3 large building.
4 Q I hope yours are prettier than Bell's
5 are.
6 A That one is Bell's.
7 Q Oh. Okay. And let's look at your side
8 of the meet point.
9 A Yes, sir.
10 Q First of all, are the fibers fused or
11 is it terminated on some kind of equipment?
12 A It's terminated on equipment.
13 Q And it is fiber. Right?
14 A Correct.
15 Q What -- what are the fiber -- what kind
16 of fiber MUX do you have? Is it OC -- what?
17 A I couldn't tell you.
18 Q You don't know whether it's OC48?
19 A No, I can't.
20 Q Okay. Back at the end office and/or
21 tandem, do you know what kind of terminating
22 equipment you got there to put it on the fiber?
23 A There's multiplexers and
24 demultiplexers. I couldn't tell you the exact
25 size of that particular facility.

0538

1 Q What's the smallest fiber MUX that
2 CenturyTel puts up these days?
3 A 3X50.
4 Q Okay. And that's OC48.
5 A I'm not sure if that's the right
6 translation -- to 3X50.
7 Q I'm just trying to figure out the
8 smallest level of the optical capacity that is
9 possible for the transport facility between
10 y'all's end-office switch and the hut. Are you
11 aware of CenturyTel having OC3s anywhere?
12 A Yes.
13 Q Do you know if it's OC3 in San Marcos?
14 A We have OC3 available in San Marcos,
15 yes.
16 Q For interoffice transport?

17 A Interoffice -- I would have to check.
18 I'm not familiar with every circuit we have in
19 the interoffice.
20 Q Do you know how many fibers there are?
21 A No, I do not.
22 Q Would you agree with me the smallest
23 level of optical capacity that's available is an
24 OC3?

25 A I will take your word for it. I'm not
0539

1 sure.
2 Q You don't know?
3 A I do not know.
4 Q Well, do you know what an OC3 is?
5 A No, I do not.
6 Q Do you know --
7 A I know it's a bunch of -- a channel
8 housed in a fiber, but I couldn't tell you the
9 exact megabit.
10 Q Let's see if we can't --
11 A It's 50 megabit, 150 megabit. OC3, 150
12 megabit. Is that what you're talking about?
13 Q Let's start at the bottom and work up.
14 Maybe we can get there. What is a voice-grade
15 channel, a DSO?
16 A That's 1D -- a DSO, one channel out of
17 a 24-channel T1.
18 Q DSO is 64 kilobits. Right?
19 A That's correct.
20 Q And a T1, which is 1.544 --
21 A 544 megabits.
22 Q -- megabits --

23 JUDGE WALSTON: Don't talk over
24 each other. The court reporter can't get that
25 down.

0540

1 Q (By Mr. McCollough) A T1 which -- or a
2 DS1 is 1.544 megabits?
3 A That is correct.
4 Q And that contains 24 DSOs, if it is
5 channelized?
6 A That is correct.
7 Q Okay. A DS3 is a 45-megabit facility.
8 Right?
9 A That is correct.
10 Q It has 28 --
11 A That is correct.
12 Q -- T1s? Do you know whether an OC3 is
13 also a 45-megabit facility?
14 A No, I do not.
15 Q Do you know how many T1s ride on an
16 OC48?
17 A No, I do not.
18 Q All communications running over the
19 fiber facilities and go to the meet point are
20 digital. Right?
21 A Correct.
22 Q They're digit -- to the extent they're
23 analog ever, they're digitized when they get
24 moved on to the fiber. Right?

25 A Correct
0541
1 Q Now, once CenturyTel facilities stop --
2 at the meet point -- the Bell hut on Wonder
3 World Drive -- there's fiber terminating
4 equipment. Right?
5 A Correct.
6 Q Is that owned by CenturyTel?
7 A Yes.
8 Q And then there are jumpers that go to
9 terminating equipment owned by Southwestern
10 Bell.
11 A There are optical jumpers. Correct.
12 Q Optical jumpers. It is at the point of
13 those jumpers that CenturyTel's ownership and
14 maintenance responsibility ends. Isn't that
15 correct?
16 A Correct.
17 Q After CenturyTel hands a call off to
18 Bell, whether it be ELCS, or toll, your job is
19 done. Right? You hand it to Bell and they take
20 it the rest of the way. Right?
21 A Correct.
22 Q On Page 6, Line 5, you say, "As the
23 correspondence shows, we initially began to
24 terminate traffic to the ASAP numbers." Why did
25 you use the word "terminate"?
0542
1 A We didn't terminate it in the local
2 switch. We send it on the toll tandem.
3 Q Okay. It is not your position that
4 CenturyTel is performing a transport and
5 termination function when it comes to calls
6 originating with CenturyTel's end users and
7 destined for an ASAP NXX? Are you?
8 A No.
9 Q So when you said "terminate," you meant
10 it in some other sense?
11 A Yes.
12 Q You really meant "we routed it"?
13 A We route it.
14 Q Okay. And, in fact, the call does not
15 terminate until it reaches its destination
16 point. Isn't that true?
17 A Correct.
18 Q Which is not in a switch. It's in some
19 kind of terminal device like a user's phone.
20 A Correct.
21 Q You're not aware of any regulatory rule
22 or statute that states that only calls that go
23 over ELCS trunks are ELCS, are you?
24 A Okay. Rephrase your question.
25 Q Sure. Are you aware of any regulatory
0543
1 rule or statute that says a call is only
2 extended local calling if it goes over an ELCS
3 trunk?
4 A No.
5 Q If, hypothetically, a San Marcos
6 CenturyTel user were to dial a Southwestern Bell

7 Lockhart user's number and the call somehow got
8 there over toll facilities, would it be your
9 position that CenturyTel could charge you user
10 toll?
11 A Yes.
12 Q So it is your position that the rating
13 of a call can depend on the facilities that the
14 call traverses?
15 A Correct. That's my opinion.
16 Q You don't know what is required in
17 order to make interoffice facilities able to
18 support 64k communications between two users who
19 have ISDN, do you?
20 A My understanding, it would take either
21 SS7-type trunk or clear channel digital cards at
22 both ends.
23 Q It has to be configured for clear
24 channel signaling?
25 A Yes, correct.
0544
1 Q And there has to be Signaling System 7
2 connectivity between the two end offices?
3 A Correct.
4 Q The San Marcos -- CenturyTel San Marcos
5 end office has Signaling System 7, doesn't it?
6 A Yes, it does.
7 Q Does CenturyTel have the ability to put
8 clear channel signaling on its interoffice
9 trunks with Southwestern Bell?
10 A Yes, it does.
11 Q You don't know if the ELCS trunks
12 between Southwestern Bell and CenturyTel of San
13 Marcos are clear channel cable, do you?
14 A They are not.
15 MR MCCOLLUGH Is this one of
16 changes he made to his deposition? And I'm
17 sorry I don't have his errata sheet.
18 MS. BROWN The court reporter
19 brought copies back.
20 JUDGE WALSTON Do we need to go
21 off the record for a minute?
22 MR MCCOLLUGH Yeah, if we can,
23 because I don't want to try to impeach him if he
24 did an errata change.
25 (Discussion off the record)
0545
1 JUDGE WALSTON Back on the
2 record. And, yes, you may approach the witness.
3 Q (By Mr. McCollough) Mr. Navarrette,
4 did you enjoy a deposition with me on September
5 25, 2002. "No" is an acceptable answer, if you
6 say, "I was there."
7 A I was there.
8 Q I'm handing you the court reporter copy
9 of your deposition. This is the original.
10 A Right.
11 Q And you did an errata?
12 A Right.
13 Q Okay. Let's take a look at Page 38 of
14 your deposition. And I'm going to read this and

15 ask you if that's what it says "What about
 16 your ELCS trunks, are they 64k clear channel
 17 capable?" What's your answer?
 18 A "They are not "
 19 Q Doesn't your answer say --
 20 A "I'm not aware "
 21 Q And the question "You don't know?"
 22 Answer "I don't know."
 23 A Right
 24 Q Okay And you didn't change that in
 25 your errata, did you?
 0546
 1 A That is correct
 2 Q Here's another chance, Mr Navarrette
 3 Are you the person to discuss interconnection
 4 agreements with ATS, VoiceStream, or any other
 5 carrier?
 6 A No, I am not
 7 Q Do you know whether CenturyTel directly
 8 or indirectly interconnected with VoiceStream
 9 for purposes of a San Marcos NXX?
 10 A No, I'm not
 11 Q Do you know if CenturyTel rates any
 12 traffic to VoiceStream as local?
 13 A No, I'm not
 14 Q What trunks do you have with
 15 Southwestern Bell that run through your meet
 16 point besides ELCS and toll?
 17 A There's access service or special
 18 circuits
 19 Q Access service?
 20 A Yeah Or circuits or access that's
 21 ordered through the access service tariffs
 22 Q So there are some jointly-provisioned
 23 special-access circuits that go through there?
 24 A Yes
 25 Q And when there are jointly provisioned
 0547
 1 access circuits that craverse the meet point,
 2 would you agree with that CenturyTel's charges
 3 for the access service only include its portion
 4 of the facilities up to the meet point?
 5 A I do not know I'm out of my realm
 6 Q Are you the person to discuss
 7 reverse-billing arrangements?
 8 A No.
 9 Q Are you the person to testify regarding
 10 any agreement between CenturyTel and CMRS
 11 carriers for ELCS?
 12 A No
 13 Q Fentress is ELCS to San Marcos Right?
 14 A Correct
 15 Q There are no direct trunks to --
 16 between San Marcos and the remote in Fentress,
 17 are there?
 18 A No, there are not
 19 Q They go to Martindale, don't that?
 20 A Correct
 21 Q Which serves as the host for the
 22 Fentress remote?

23 A That's my understanding
 24 Q So in order for an ELCS call between
 25 San Marcos and Fentress to get where it needs to
 0548
 1 go is routed through Martindale Right?
 2 A Correct
 3 Q Martindale and Fentress are different
 4 rate centers, aren't they?
 5 A Yes
 6 Q Okay If you can take a look at ASAP
 7 Exhibit 27 It's the thick one that starts with
 8 the ELCS For everybody's reference, I'm going
 9 to be looking at Schedule C, Page 2 for
 10 Lockhart, which I miraculously turned right to,
 11 for a change
 12 A What am I looking for?
 13 Q The Schedule C, Page 2
 14 A Schedule C.
 15 Q Lockhart, San Marcos I had a hard
 16 time finding it, too I think it's further
 17 back
 18 A I'm sorry
 19 Q It's all right I had trouble, too
 20 Here we go
 21 A Yeah
 22 Q Okay It was that tab that fooled both
 23 of us
 24 A Yes
 25 Q When CenturyTel was developing its ELCS
 0549
 1 revenue requirement, it used -- on Line 4 --
 2 26,661 access lines Right? Do you see that on
 3 Line 4?
 4 A My Line 4 says, "Revenue from \$3 50 "
 5 I must be on the wrong page Okay Got it
 6 Schedule C, Page 2 Got it Go ahead Yes
 7 Q 26,661?
 8 A That is correct
 9 Q You started with a revenue requirement
 10 on Line 1, a total annual revenue requirement,
 11 divided that by 12 to get a monthly revenue
 12 requirement, and then divided that by the number
 13 of access lines to get the charge per access
 14 line?
 15 A Correct
 16 Q Okay Now, you testified earlier that
 17 there's 33,000 access lines presently in San
 18 Marcos?
 19 A Approximately
 20 Q And if the ELCS surcharge is presently
 21 17 cents allocated to Lockhart -- let's do a
 22 little bit of math You now have 6,300 more
 23 access lines, approximately, don't you?
 24 A Correct
 25 Q If you multiply 17 cents by 6,300 -- I
 0550
 1 have a calculator here if you need it
 2 A It's close to 13,000 a year Is that
 3 what you're asking?
 4 Q \$12,931 50?

5 A I missed it by a few dollars
6 Q You did pretty good So CenturyTel of
7 San Marcos is presently recovering in ELCS
8 surcharge revenues about \$13,000 a year more
9 than the revenue requirement that it showed when
10 it petitioned for the surcharge to the
11 Commission Right?
12 A Correct
13 MR MCCOLLUGH I'm half inclined
14 to make up more questions, but --
15 JUDGE WALSTON Just don't make
16 any up we don't need
17 WITNESS NAVARRETE You're just
18 going to get more "Nos"
19 MR MCCOLLUGH That's all I
20 have
21 JUDGE WALSTON Okay
22 MR Stewart, do you have any questions of the
23 witness?
24 MR STEWART I do, Your Honor
25 0551

1 BY MR. STEWART.
2 Hello, Mr Navarette Good afternoon
3 Q Hello, I've asked you before if you were or
4 anyone at CenturyTel had attempted to -- I'm
5 sorry let me refer to a particular page of
6 your direct testimony Good way to start Page
7 19 of your direct testimony
8 A Yes.
9 Q You say, "We've issued refunds to any
10 customer who requested a refund"
11 A That is correct.
12 Q And then, "total charges are less than
13 \$2,000"
14 A Correct.
15 Q I was going to ask you, has anyone at
16 CenturyTel attempted to calculate what the total
17 charges would be if all customers had requested
18 a refund?
19 A I'm not aware I have to defer that
20 question
21 Q So Susan Smith?
22 A Yes.
23 MS BROWN I think there may be
24 some confusion between -- in the question and in
25 the answer. There was a change -- may we go off
0552

13 is, in fact, the total amount if all customers
14 had requested a refund?
15 A That -- yes That is the total amount
16 that we captured from April 2 to April 19th when
17 we stopped The total bill for that call
18 that's what CenturyTel would have collected or
19 would have -- if had billed agreements with
20 other carriers, that was our amount There
21 could be more If it was carried over someone
22 else's facilities that they -- IntralATA PIC was
23 picked as someone that I don't bill for, that I
24 don't have a billing agreement with That's my
25 understanding So this is the part that we
0553

1 capture, that we billed
2 Q Okay So the roughly \$2,000 is the
3 total amount in intralATA toll charges collected
4 by CenturyTel as an intralATA toll provider?
5 A Correct Or for someone that we billed
6 toll for
7 Q Okay But does not include any access
8 charges or intralATA toll charges that other
9 intralATA toll providers may have passed on to
10 their customers?
11 A That's correct
12 Q Okay Do you know what the total
13 amount of refunds were?
14 A No, I don't
15 Q It's some amount less than \$2,000?
16 A Yes, it is
17 Q Has CenturyTel made -- since the time
18 of your drafting of testimony, has CenturyTel
19 made by additional efforts to provide refunds to
20 customers?
21 A Only if the customer called in and
22 brought it to our attention
23 Q So additional refunds may have been
24 made --
25 A Correct
0554

1 Q -- since then? But as far as you know,
2 the total amount may not have been refunded yet?
3 A That's -- yes I don't know that, if
4 we've reached that total amount That is
5 correct
6 MR. STEWART Okay. That's it
7 Thank you Pass the witness
8 JUDGE WALSTON Any redirect?
9 REDIRECT EXAMINATION
10 BY MS BROWN
11 Q Mr Navarette, you were asked some
12 questions about direct trunks to CenturyTel
13 connection with ELCS service And I believe you
14 agreed with Mr McCollough those were routed
15 through the Martindale office?
16 A Yes
17 Q Is Martindale a tandem?
18 A No
19 Q So --
20 A Martindale is the end office We do

21 the tandem function for --
 22 Q Martindale?
 23 A Martindale
 24 Q It's not a tandem And the circuits
 25 that would extend from CenturyTel of San Marcos
 0555
 1 to Fentress are routed through that Martindale
 2 office?
 3 A Correct
 4 Q Are they switched at the Martindale
 5 office?
 6 A Yes
 7 Q Because that -- does that Martindale
 8 office -- it's the brains for the remote?
 9 A Yes That is the host office for
 10 Fentress and Martindale
 11 Q Now, you were asked a question about
 12 if, hypothetically, a San Marcos end user called
 13 a Southwestern Bell end user over -- at Lockhart
 14 over toll facilities, then you would charge toll
 15 and your answer was "yes"?
 16 A But I don't today by interim order
 17 But, yes, I would expect to charge toll
 18 Q We're talking about -- let me ask my
 19 question more clearly I'm sorry
 20 A That's all right
 21 Q If a San Marcos end user called a
 22 Southwestern Bell end user in Lockhart --
 23 A Okay
 24 Q -- that would normally be an ELCS call?
 25 A That is correct
 0556
 1 Q But if they dialed 1-plus and tried to
 2 make that a toll call, you responded that you
 3 would charge toll. If the customer dialed
 4 1-plus for that call to Lockhart, would the
 5 customer receive some kind of recording that
 6 would tell them that it was not necessary to
 7 dial the 1-plus?
 8 A That is correct
 9 Q Mr. McCollough asked you questions
 10 about whether CenturyTel had the capability to
 11 put clear channel signaling on all of -- on the
 12 toll facilities to Southwestern Bell Do you
 13 recall that question?
 14 A Yes
 15 Q And I believe your response was that
 16 you had the ability to do that Does CenturyTel
 17 do that?
 18 A No.
 19 Q And can you explain why you don't do
 20 that?
 21 A Bell did not order clear channel 64
 22 trunks for that connection
 23 Q Now, with respect to the ELCS trunks --
 24 their not having clear channel capability -- I
 25 believe you said in your deposition you were not
 0557
 1 aware of whether the ELCS trunks had clear
 2 channel capability And on the stand today, you

3 said that -- you said that they do not have that
 4 capability Is that accurate?
 5 A Yes That's accurate, because Bell did
 6 not order 64k channels
 7 Q And did you inquire after your
 8 deposition about whether those ELCS trunks had
 9 clear channel capability?
 10 A Yes
 11 Q And so the difference that occurred
 12 since your deposition is that you have informed
 13 yourself on that topic?
 14 A That is correct
 15 Q Now, with respect to -- Mr. McCollough
 16 asked you some questions about the ELCS revenue
 17 requirement for the -- when the Lockhart ELCS
 18 route was established When was that revenue
 19 requirement prepared? Would that be in --
 20 A My understanding was in '94/'95 -- or
 21 '95, actually
 22 Q Okay Have costs changed since '95?
 23 A Absolutely
 24 Q Do you revise your rates every time
 25 costs change?
 0558
 1 A No
 2 Q Does the 17 cents -- well, let me ask
 3 it this way Would health insurance costs have
 4 increased since 1995?
 5 A Yes
 6 Q Would your labor costs have increased
 7 since 1995?
 8 A Yes
 9 Q And would that affect your maintenance
 10 costs with respect to these facilities?
 11 A Yes
 12 Q Do you believe that were you to compute
 13 revenue requirement today -- and if you don't
 14 know, tell me you don't know -- if you were to
 15 complete a revenue requirement today, would it
 16 be greater than \$54,923 on an annual basis for
 17 those circuits?
 18 A My opinion, yes, it would be
 19 Q Now, when the -- well --
 20 MS BROWN That's all I have,
 21 Your Honor
 22 JUDGE WALSTON Okay
 23 Mr. McCollough
 24 RE-CROSS-EXAMINATION
 25 By MR. MCCOLLOUGH
 0559
 1 Q Is CenturyTel a rate-based,
 2 rate-of-return regulated carrier in Texas --
 3 CenturyTel San Marcos?
 4 A We're an alt reg Yeah We're a
 5 rate-based elected alt reg company Yes
 6 Q So you haven't elected incentive
 7 regulation Correct?
 8 A Alt reg Yes I am an alt reg,
 9 Chapter 59 company
 10 Q Chapter 59 If CenturyTel believes

11 that its total annualized revenues as adjusted
12 do not meet its historical test period based
13 annual revenue requirement, can CenturyTel come
14 asking for additional I just know on all reg,
15 we had elected to freeze the rates for a number
16 of years. So that would, in my opinion, tell me
17 I would not be able to go before the Commission
18 and raise the rate. But I'm not the legal
19 expert that would know that
20 Q The cost of operating a
21 telecommunications system as an incumbent
22 carrier, as at your position that they're rising
23 or falling?
24 A The cost to run one?
25 Q Yes.
26 A They're rising
27 Q You think they're rising?
28 A Yes
29 Q Did CenturyTel of San Marcos calculate
30 net returns or net profits before the parent
31 fails?
32 A I'm not the financial expert.
33 Q You don't know.
34 A I do not know.
35 Q Well, let me just kind of change tracks
36 real quick and let me ask you CenturyTel could
37 go to the Commission and seek an increase in its
38 ELCS revenue, its ELCS surcharge, couldn't it?
39 A I do not know
40 Q You don't know?
41 A No.
42 MR MCCOLLUGH That's all I
43 have, Your Honor
44 JUDGE WALSTON Okay Anything
45 else, Mr. Stewart?
46 MR STEWART Yes one question,
47 I think.
48 0561

19 A I mean, when I said "our costs being
20 health, labor, maintenance," I was referring
21 strictly to operational costs
22 Q Okay
23 A I was not talking about toll costs
24 Q Okay Were you referring specifically
25 to costs that would be included in an -- for
26 purposes of an ELCS surcharge request?
27 A Since I'm not the one that does the
28 cost studies, I wouldn't know I get the calls,
29 provide the hours, the labor, or whatever that's
30 needed, but I don't know all the elements that
31 make up that cost study
32 MR STEWART Okay Thank you
33 That's all Thanks so much
34 JUDGE WALSTON Anything else,
35 Ms Brown?
36 MS BROWN No, Your Honor
37 JUDGE WALSTON Okay
38 Mr Navarette, thank you.
39 WITNESS NAVARETTE That was way
40 too easy
41 MR MCCOLLUGH I'm sitting here
42 trying to cook up other questions
43 WITNESS NAVARETTE Well, I can
44 cook up some answers.
45 JUDGE WALSTON Why don't we go
46 off the record for a minute
47 (Discussion off the record)
48 JUDGE WALSTON Back on record
49 For a moment we had a brief off-the-record
50 discussion we're going to recess the hearing
51 today It will be reconvened at a later date to
52 be determined In the meantime, there are a few
53 housekeeping matters that the parties will take
54 care of And I will get with the parties and
55 let them know my availability over the next few
56 weeks, and then we will set a date at that time
57 And we will go off the record at this time
58 (Proceeding recessed 4:46 p.m.)
59 0563

1 BY MR. STEWART
2 RE CROSS-EXAMINATION
3 Q Mr. Navarette, in response to the
4 questions Ms. Brown asked you about cost, you
5 responded as to certain costs having increased,
6 and I think one example was health insurance
7 cost Is that correct?
8 A Yes Correct
9 Q Do I correctly recall that CenturyTel
10 witness Ms. Smith referred to the cost study for
11 CenturyTel having been only a lost toll study,
12 and not including cost increases?
13 A I don't remember I don't recall the
14 testimony.
15 Q Okay.
16 A I do remember hearing about the toll
17 cost, but I don't know what --
18 Q Okay

0564

1 TRANSCRIPT OF PROCEEDINGS
2 BEFORE THE
3 STATE OFFICE OF ADMINISTRATIVE HEARINGS
4 (FOR THE PUBLIC UTILITY COMMISSION
5 OF TEXAS)
6 COMPLAINT, REQUEST FOR EXPEDITED)
7 RULING, REQUEST FOR INTERIM)SOAH DOCKET NO
8 RULING AND REQUEST FOR EMERGENCY) 473-02-2503
9 ACTION OF ASAP PAGING, INC.,)PUC DOCKET NO
10 AGAINST CENTURYTEL OF SAN) 25673
11 MARCOS, INC)

12 HEARING ON THE MERITS
13 TUESDAY, NOVEMBER 12, 2002
14 BE IT REMEMBERED THAT at 9 13 a m , on
15 Tuesday, the 12th day of November 2002, the
16 above-entitled matter came on for hearing at the
17 State Office of Administrative Hearings, William
18 P. Clements Building, 300 West 15th Street, Room
19 402, Austin, Texas, before THOMAS WALSTON,
20 Administrative Law Judge, and the following
21 proceedings were reported by Evelyn Coder, a
22 Certified Shorthand Reporter of
23 Volume 3 Pages 564 - 830

0565

1 P R O C E E D I N G S
2 TUESDAY, NOVEMBER 12, 2002
3 (9 13 a m)
4 (CenturyTel Exhibit Nos 3, 3A and
5 3B marked)
6 JUDGE WALSTON We'll go on the
7 record at this time For the record, today's
8 date is November 12, 2002, and we are resuming
9 the hearing in SOAH Docket No 473-02-2503, PUC
10 Docket No 25673, complaint of ASAP Paging, Inc
11 against CenturyTel of San Marcos, Inc , and when
12 we recessed the hearing previously, CenturyTel
13 was in the process of presenting its case So,
14 Ms Brown, you can call your next witness
15 MS BROWN Thank you I call
16 Mr Wesley Robinson
17 (Witness sworn)
18 JUDGE WALSTON Mr Robinson,
19 we're in a large room so be sure and keep your
20 voice up good and loud and speak into the
21 microphone, if you will That will help us
22 Ms. Brown, you can proceed

0566

1 PRESENTATION ON BEHALF OF
2 CENTURYTEL OF SAN MARCOS, INC

3

4 (CONTINUED)
5 WESLEY ROBINSON,
6 having been first duly sworn, testified as
7 follows
8 DIRECT EXAMINATION
9 BY MS BROWN
10 Q Mr Robinson, do you have before you
11 the documents that the court reporter has marked
12 as CT Exhibits 3 and 3A?
13 A Yes, I do
14 Q Did you prepare those documents?
15 A Yes, ma'am.
16 Q Can you tell me whether or not you have
17 any changes or corrections to either 3 or 3A?
18 A Yes, I do have some grammatical
19 corrections and then a supplement to that
20 testimony
21 If we could turn to Page 3, Line 21,
22 the first three words read "I have appear " I
23 would like to add an "e-d" so it's "appeared "
24 Q Okay
25 A Page 6, Line 12, the second to the last
word in that sentence is "agencies " That

0567

1 should have an apostrophe after it
2 Page 7, Footnote 5, there is a
3 supplement to the testimony that I think has
4 been marked CT Exhibit 3B I've added some
5 language to Footnote 5 Would you like me to
6 read that or would you just --
7 Q Do you have Exhibit 3B before you?
8 A Yes, I do
9 Q Does it -- does the first paragraph of
10 3B reflect the change that you would propose to
11 make to Page 7, Footnote 5?
12 A Yes The addition is the sentence
13 after the citation The sentence that I've
14 added is "As shown in Exhibit WR-6, Level 3's
15 transmitters are located in Houston, San Antonio
16 and Dallas MTAs "
17 Turning to Page 12, Line 16, it reads
18 "routed to a paging customers " Please strike
19 the "s" off of "customers "
20 Page 16, after Line 20 is where we
21 would like to insert -- I would like to insert
22 the additional question and answer -- the two
23 additional questions and answers in CT 3B.
24 JUDGE WALSTON You don't need to
25 read those into the record

0568

1 A Okay Page 24, Line 10, the question
2 reads, "What is your understand?" I would like
3 to add an "i-n-g" so it reads "What is your
4 understanding?"
5 Then Page 32, Line 9, change "does" to
6 "do," the very first word of that line Those
7 are the only changes that I have
8 Q (By Ms Brown) Okay Mr Robinson,
9 did you also prepare the document that's been
10 marked as CenturyTel Exhibit 3B?

11 A Yes, I did
12 Q If I were to ask you the questions
13 contained in your direct testimony today, would
14 your responses be the same?
15 A Yes ma'am
16 MS BROWN Your Honor, I would
17 offer CenturyTel Exhibits 3, 3A and 3B
18 JUDGE WALSTON I think I
19 previously ruled on the objections made to these
20 exhibits, and they will be admitted
21 MR. MCCOLLOUGH Your Honor --
22 JUDGE WALSTON Yes
23 MR. MCCOLLOUGH -- if I may two
24 things with regard to 3 in thinking through
25 your rulings with regard to Mr. Gaetjen and your
26 ruling excluding his reference to citation of an
27 inclusion of other state decisions, I would like
28 to note that Mr. Robinson makes reference to a
29 particular decision out of Maine on Page 32 of
30 his testimony, lines 5 through 8, and in Note
31 57.
32 It seems to me that if you're going to
33 exclude Mr. Gaetjen's testimony regarding other
34 states, then you should make a similar ruling
35 with regard to Mr. Robinson
36 I also have a comment about 3B, but I
37 would like to dispose of this first
38 JUDGE WALSTON Do you have any
39 response, Ms. Brown?
40 MS. BROWN Yes, Your Honor. I
41 believe that your ruling may be based on the
42 fact that Mr. Gaetjen is not an expert witness
43 but is a lay witness in this proceeding, and I
44 believe that you have permitted Mr. Goldstein
45 and others -- I'm sorry -- to be permitted
46 Mr. Goldstein to continue to testify as to
47 regulatory decisions in other states
48 In fact, Mr. Goldstein testified in his
49 rebuttal testimony with regard to this same
50 decision, and so I would respond to the
51 objection that you have permitted so far the
52 expert witnesses to testify to these regulatory
53 decisions in other states to the extent they
54 have an impact on this proceeding
55 MR. MCCOLLOUGH If I could just
56 briefly respond. First of all, my recollection
57 is that Mr. Gaetjen was deemed to be merely a
58 lay witness, and in fact, he was proved up to be
59 an expert witness in the instant hearing
60 My understanding of your ruling with
61 regard to references to regulatory rulings was
62 that you were going to allow references to Texas
63 FCC decisions and FCC decisions but that you
64 were going to exclude other state decisions,
65 and, again, I would simply urge that the quality
66 would justify excluding the testimony
67 JUDGE WALSTON At this point, let
68 me take it under advisement and I'll look at

19 that at the first break and look at
20 Mr. Gaetjen's -- and my notes and see what I
21 recall from the --
22 MR. MCCOLLOUGH Yes, sir, I'll
23 be happy to give you transcript citations if you
24 want to have your recollection refreshed on the
25 basis of your ruling
26 With regard to 3B, I wish to object to
27 the supplementation. Testimony was due to be
28 filed on a date certain. The supplements were
29 distributed -- the supplementation was distributed at
30 the hearing prior to the break. That was after
31 the date for pre-filing of direct testimony, and
32 I object under procedural Rule 22.22(b),
33 which basically indicates that testimony must be
34 timely prefiled in order to be admitted
35 JUDGE WALSTON Ms. Brown, what's
36 your response?
37 MS. BROWN, Your Honor, this
38 testimony is a supplement. I believe it's very
39 important testimony. It is directly contrary to
40 positions stated by ASAF in this proceeding that
41 it's entitled as a CMRS carrier to have all
42 calls to its Austin transmitter treated as local
43 calls because they are calls within the MTA.
44 I don't believe there's any surprise
45 about this. This contains only facts that
46 should be well known to ASAF itself. It was
47 prepared, and the parties have had ample time to
48 prepare any supplemental responsive testimony
49 with regard to this supplementation
50 I even, at the conclusion of our last
51 hearing, sent Mr. McCollough a letter and said
52 we would not object to the extent that he
53 believed he would need to supplement his
54 rebuttal to address these same issues. What
55 this exhibit shows is that a substantial portion
56 of the calls to the ASAF transmitter in Austin
57 come from areas outside the metropolitan calling
58 area and thus would not be local calls even
59 under the rules applicable to CMRS traffic
60 MR. MCCOLLOUGH I'm not sure what
61 Ms. Brown is talking about in terms of calls to
62 the Austin transmitter. This testimony --
63 MS. BROWN The Austin terminal. The Austin
64 switch
65 MR. MCCOLLUGH Here is my
66 problem, Your Honor. This supplemental
67 testimony, for the first time, injects an
68 assertion that some of the calls are interstate,
69 and, therefore, not local under the FCC rules
70 with regard to carrier compensation for calls
71 between an ILEC and a CMRS provider.
72 The late submission of this testimony
73 precluded me from filing any discovery on the
74 matter. It was after discovery deadline had

1 closed It was after depositions had been
2 taken It injected a new issue into the case,
3 and I just believe that's unfair

4 JUDGE WALSTON Okay Any further
5 response, Ms Brown?

6 MS BROWN Your Honor, once
7 again, all this supplement does is present facts
8 that are well, well, well known to ASAP The
9 legal conclusion of that is something we can
10 argue in brief

11 All this supplemental testimony does is
12 show what -- for the locations where ASAP has
13 transmitters -- their relation with respect to
14 the Dallas, Houston and San Antonio MTA
15 boundaries, and that's all that the supplemental
16 testimony shows, and those facts are well within
17 ASAP's knowledge. There's nothing with respect
18 to discovery that should be prejudicial to ASAP
19 based on those facts

20 JUDGE WALSTON Is there any
21 reason why this could not have been filed
22 earlier?

23 MS BROWN Your Honor, I think
24 the reason that it -- no, there's not There's
25 not The issue is simply that we believed ASAP,
0574

1 and then when we looked more closely, the facts
2 as asserted by ASAP were not correct

3 MR. MCCOLLOUGH I disagree with
4 that characterization as well but --

5 JUDGE WALSTON Mr McCollough,
6 let me ask you just a question I'm just now
7 trying -- and I apologize for trying to read
8 this while you-all were talking, but looking at
9 Exhibit 3B, the first question talking about the
10 location of the transmitters, is there really
11 any dispute over that as just a factual
12 assertion?

13 I see a little bit of difference
14 between the first question and the second
15 question because the second question kind of --

16 MR. MCCOLLOUGH The location of
17 the transmitters does not appear to be a fact in
18 dispute The placement of them within an MTA
19 may or may not be I am not, at this point,
20 prepared today to take issue with those factual
21 assertions, but it was the placement of these
22 transmitters in different MTAs, which was
23 evident from our discovery responses from the
24 beginning We told them of those locations, and
25 they could very easily have talked about this in
0575

1 their original --

2 JUDGE WALSTON Okay I'm not
3 trying to split the baby, but I do see a
4 difference, but I'll go ahead and allow the
5 supplement to the extent -- on the supplement
6 Exhibit 3B, Lines 1 through 9, to be admitted,
7 but I will grant the objection and strike the
8 testimony on Lines 9 through 14

9 Then on your rebuttal case,
10 Mr McCollough, if Mr Gaetjen or one of your
11 witnesses looks at this testimony on Lines 1
12 through 8 and if there's something you need to
13 add to your rebuttal testimony, you'll be
14 allowed to do that

15 MR. MCCOLLOUGH Thank you, sir.

16 MR STEWART Your Honor, this is
17 Roger Stewart for staff Just to clarify so
18 that I'm certain, I assume this Exhibit RW-6 is
19 admitted then?

20 JUDGE WALSTON Right It's part
21 of Questions 1 through 8

22 MR. STEWART: All right Thanks

23 JUDGE WALSTON All right Going
24 back to Mr Robinson's direct testimony, it will
25 be admitted subject to -- I believe I did grant
0576

1 one of the motions to strike originally on his
2 testimony, so it will be admitted subject to the
3 ruling previously made.

4 (CenturyTel Exhibit Nos 3, 3A and
5 3B admitted)

6 JUDGE WALSTON Okay All right,
7 Mr McCollough?

8 MR. MCCOLLOUGH Thank you, Your
9 Honor

10 CROSS-EXAMINATION

11 BY MR. MCCOLLOUGH

12 Q Are you ready, sir?

13 A Yes, sir

14 Q We get to talk at each other across a
15 very long table, so if you can't hear me, let me
16 know All right?

17 A I wish you would come over here and sit
18 with these other guys

19 (Laughter)

20 Q (By Mr McCollough) Turning to your
21 testimony on Page 4, Lines 4 through 9, you're
22 talking about your time with Clark, Thomas &
23 Winters?

24 A Yes, sir

25 Q You were a legal assistant for that
0577

1 firm?

2 A Yes, sir

3 Q You're not a lawyer?

4 A No, sir

5 Q Are you a trained paralegal?

6 A No, sir

7 Q You're not an economist, are you?

8 A I have a degree in economics I don't
9 know what makes an economist I don't consider
10 myself an economist

11 Q You're not accountant, are you?

12 A I'm not a CPA, no, sir

13 Q Are you chartered financial analyst?

14 A No, sir

15 Q Are you an engineer?

16 A No, sir

17 Q In your duties with Clark, Thomas &
18 Winters, and then with John Staurulakis -- and
19 by the way, I'm going to call them JSI if that's
20 okay

21 A Please do.

22 Q You have never worked with an
23 alternative carrier if that work would involve a
24 matter that is competitive with incumbent
25 carriers, have you?

0578 1 A Personally, I have not been involved in
2 competitive sort of work

3 Q You've never worked on a "paging
4 agreement" that has been submitted to and
5 approved by any state Commission, have you?

6 A I've participated in some paging
7 agreement negotiations, but those negotiations
8 did not prove -- or did not result in an
9 agreement that was filed with the Commission

10 Q Was there an arbitration that followed?

11 A No, sir. An agreement was not
12 executed. It's still in dispute

13 Q Have you ever filled out the forms to
14 obtain an NXX?

15 A No, sir

16 Q Have you ever personally punched down a
17 circuit?

18 A I don't even know what that means

19 Q Have you ever terminated a circuit on
20 any kind of frame?

21 A No, sir.

22 Q Have you ever designed a network?

23 A A telecommunications network?

24 Q Yes, sir

25 A No, sir.

0579 1 Q You've never run a telecommunications
2 company, have you?

3 A No, sir.

4 Q You've never worked for or with a CMRS
5 provider, have you?

6 A Been employed by a CMRS provider?

7 Q Or consulted for.

8 A Not officially, no, sir. Some of my --
9 the reason I hesitate to answer that that way is
10 some of my clients do have CMRS affiliates, and
11 they have occasionally asked me for advice on
12 that matter -- on some of those matters related
13 to their CMRS affiliate

14 Q Have you ever performed translations on
15 a switch?

16 A No, sir

17 Q Isn't it true that, other from what
18 you've learned in this case, you have no
19 knowledge how paging companies connect to their
20 transmitters from switches or paging terminals?

21 A No, sir, I wouldn't agree with that.

22 MR. McCOLLOUGH: If I could
23 approach the witness?

24 JUDGE WALSTON: Sure

25 Q (By Mr. McCollough) I took your

0580 1 deposition on September 24, 2002, didn't I?

2 A Yes, sir

3 Q Isn't it true that in that deposition I
4 asked you if you -- let me see here Let me
5 just read this to you

6 Isn't it true that on Page 16,
7 beginning on Line 25 I asked you, "Do you know
8 how paging companies connect to their
9 transmitters from their switches or paging
10 terminals?" Do you see that?

11 A Yes

12 Q What do you answer beginning on Line 3
13 and continuing on Line 7?

14 A It says, "Other than what I've learned
15 in this case, I think I've -- through this case
16 you guys have said there's a wireless connection
17 to your transmitters, or ASAP said that " I
18 think your characterization was that I had no
19 knowledge I don't agree with that
20 characterization

21 Q But I think you left out a word here

22 A "Other than what I've learned in this
23 case, no I think I've -- through this case you
24 guys have said there's a wireless connection to
25 your transmitters, or ASAP said that " I just

0581

1 disagree with your characterization that I have
2 no knowledge

3 Q I understand You agree with me, don't
4 you, that switch is part of a network, don't
5 you?

6 A Generally I mean, maybe you could be
7 more -- a telecommunications switch, part of the
8 telecommunications network?

9 Q Yes, sir

10 A Yes

11 Q Would you agree with me that a paging
12 terminal is part of a CMRS network?

13 A I believe so

14 Q Would you agree with me the transport,
15 whether it be landline or wireless, between a
16 paging terminal and a transmitter is part of a
17 CMRS network?

18 A I think so

19 Q Would you agree with me that a
20 transmitter is part of a CMRS network?

21 A Yes, sir

22 Q Would you agree with me that the radio
23 connection between a transmitter and a mobile
24 device, such as a pager, is part of a network?

25 A It's part of a CMRS network

0582

1 Q Would you agree with me that a mobile
2 device such as, for example, a pager is part of
3 a CMRS network?

4 A It's part of a CMRS network, yes, sir

5 Q Do you have any -- let me rephrase the
6 question. You agree that ASAP has FCC licenses

7 authorizing it to serve Lockhart, Kyle and
8 Fentress, as well as San Marcos, don't you?
9 A I don't dispute that fact
10 Q You agree that ASAP has network
11 facilities in Lockhart, Kyle and Fentress, as
12 well as San Marcos, don't you?
13 A No, I do not It has a transmitter. I
14 wouldn't characterize those as public switched
15 telephone network facilities, no
16 Q I'm sorry if my question was unclear
17 I said "network facilities " I did not qualify
18 it
19 A CMRS network facilities, yes, sir
20 Q You agree that ASAP has customers who
21 are physically located in Lockhart, Kyle and
22 Fentress and San Marcos, at least some of the
23 time, don't you?
24 A That's what's been represented
25 Q You don't have any disagreement?

0583
1 A I have no disagreement
2 Q Do you agree with me that ASAP is a
3 real paging company providing CMRS services to
4 its paging customers?
5 A Yes, when providing service to paging
6 customers, yes, sir
7 Q Turning to your testimony regarding
8 number assignment, beginning on Page 32, line
9 12 --
10 A You missed about 30 pages there Go
11 ahead I'm sorry
12 Q In the exhibit WR-1, you represent in
13 your testimony that that's the current central
14 office code assignment guidelines Do you know
15 whether that's still a current copy?
16 A I think a version may have come out in
17 August -- a newer version This one is dated
18 April 22nd For the relevant portions of my
19 testimony, the sections that I've cited have not
20 changed

JUDGE WALSTON I didn't hear the
21 last --
22 A The sections that I've cited in my
23 testimony have not changed to my knowledge
24 Q (By Mr McCollough) Are your positions

0584
1 on number assignment under the code guidelines
2 based on any written interpretations or actions
3 by the CO code administrator?
4 A Which position are you referring to?
5 Q Your position regarding the requirement
6 that there be a switch or a point of
7 interconnect within the rate center where you
8 seek an NXX
9 A What sort of action would you envision
10 the code administrator -- other than writing
11 guidelines?
12 Q Yes, such as specific action on a
13 request for an NXX assignment to a rate center
14 A Well, I think that NANPA generally

15 requires folks to represent that they are going
16 to comply with these guidelines when they ask
17 for a code.
18 Q Are you aware -- let me just try to ask
19 this a different way Are you aware of any
20 instance where a CO -- where the number
21 assignment administrator has rejected an NXX
22 request based on the fact that the applicant
23 does not have a switch or point of interconnect
24 within the rate center within which it is
25 attempting to secure an NXX code?

0585
1 A A switch or point of interconnection,
2 no The New Hampshire commission recently
3 released an order --
4 MR MCCOLLOUGH Objection, Your
5 Honor I'm going to object That's beyond the
6 scope of the question and nonresponsive
7 A I think you asked me to explain what
8 NANPA has been ordered to do I'm trying to
9 answer that question
10 MR MCCOLLOUGH I asked you about
11 the CO code administrator action.
12 JUDGE WALSTON I think he did ask
13 you about the administrator, any action --
14 A NANPA is the code administrator
15 Q (By Mr McCollough) You said New
16 Hampshire I thought I heard you say that
17 A Yes The New Hampshire commission has
18 ordered NANPA to require any requests for a new
19 code -- any person who submits a request for a
20 new code to ensure that agreements are in place
21 with all carriers that have local dialing to the
22 rate center where that code is going to be
23 opened before they assign the code to that
24 customer, to that code -- to the applicant
25 Q But that's not something that's in

0586
1 place from Texas, is it?
2 A Not that I'm aware of, no
3 (ASAP Exhibit Nos 28 through 32
4 marked)
5 Q (By Mr McCollough) Mr Robinson, I've
6 handed you what's been marked ASAP Exhibits 28,
7 29, 30, 31, 32
8 Does what's been marked as ASAP Exhibit
9 28 appear to be an excerpt of an FCC order in
10 Docket 78-72, Phase I, FCC Document No 84-36?
11 A Yes, sir, it appears to be This is
12 No 28 Correct?
13 Q Yes, sir Are you familiar with the
14 FCC's access charge proceeding that began in
15 1984?
16 A I was still in high school in 1984 I
17 have some knowledge of it, but I wasn't
18 around -- I wasn't practicing at that time
19 Q Have you had occasion to review any of
20 the orders in the access charge proceeding?
21 A Not a whole lot of them Some of them
22 I do -- I do go back when I find a footnote in a

23 new order that refers back to something else.
24 I'll take a look at it.
25 Q If you could turn to the second page of
0587 1 this exhibit, I would like to focus on the FCC's
2 discussion in Paragraph 144. Could you take a
3 moment to review that?
4 A Paragraph 144?
5 Q Yes, sir.
6 A Okay. I've read it.
7 Q Is it fair to say the FCC is basically
8 saying that the radio common carriers, today
9 CMRS providers, were asking the FCC if they were
10 subject to access charges?
11 A For interconnection services
12 Q Yes.
13 A That's what it appears that the radio
14 common carriers were asking.
15 Q Now, let's take a look at Paragraph
16 146.
17 A Okay.
18 Q Would you agree with me that the FCC is
19 basically saying that it did not intend for
20 access charges to be applicable to radio common
21 carriers for interconnection purposes?
22 A I think that's what it said. I haven't
23 read that whole order. I imagine what they were
24 referring to is local interconnection to receive
25 their local interconnection trunks.
0588 1 Q And usage?
2 A I don't know about -- well, maybe local
3 usage. I mean, to date, CMRS providers are
4 subject to access charges for nonlocal usage
5 It's been around for a long time.
6 Q For nonlocal usage as defined by the
7 FCC rule defining local for CMRS purposes?
8 A Full-blown access charges, yes.
9 Q We're going to get to talk about that
10 in a second. I think you cite to something
11 Maybe you don't. I'm sorry.
12 Let's turn to ASAP 29, if we can. Does
13 this appear to be an order by the FCC in
14 February 1986, FCC Document 86-85 in the matter
15 of the need to promote competition and efficient
16 use of spectrum for radio common carrier
17 services?
18 A That's what it appears to be.
19 Q Have you reviewed that particular
20 memorandum opinion and order?
21 A I don't believe I have.
22 Q Are you aware that the FCC issued a
23 policy statement in 1986 regarding
24 interconnection between CMRS providers and
25 incumbent LECs?
0589 1 A I'm not aware of it, no, sir. Can you
2 refer me to it? I may have read it just
3 sitting here today. I don't recall reading a
4 policy decision. This is a pre-'96 -- pre-ETL?

5 Q Yes, sir, it is. If you could turn to
6 the fourth page back from the end, do you see
7 down at the bottom where it says "Appendix B,
8 cellular systems?" I think it's the fourth page
9 back. It's at the very bottom. Hopefully you
10 have the same --
11 A It says "Mountain Bell's responses."
12 Q Let me make sure we're talking from the
13 same document.
14 A The fourth page from the back. I'm
15 sorry. I thought you meant four pages back.
16 Q Sorry. Okay. Do you see down at the
17 bottom where it says, "Appendix B, FCC policy
18 statement on interconnection of cellular
19 systems?"
20 A I see that.
21 Q Does it, therefore, appear that the FCC
22 was in fact issuing a statement of its policy on
23 interconnection between cellular CMRS providers
24 and LECs?
25 Q I haven't read this order,
1 Mr. McCollough. It appears that there's some
2 sort of policy statement here.
3 Q Let's just assume that it is. If you
4 could turn to the next page, Paragraph 2, let me
5 just kind of ask you a general question.
6 Would you agree with me that CMRS
7 providers are entitled to choose the form of
8 interconnection that they wish to have with
9 incumbent LECs?
10 A Between the various Type 1 and Type 2
11 connections, yes, sir.
12 Q That choice is not limited to the
13 types, is it?
14 A Well, under the CMRS interconnection
15 rules, there's three options.
16 Q Well, if you read Paragraph 2, it
17 doesn't talk about Type 1 or 2 at all, does it?
18 It talks generally about --
19 A I think down -- I see Type 1 and Type 2
20 down -- maybe six lines from the bottom of that
21 Paragraph 2.
22 Q Well, down at the bottom in Paragraph
23 let's just focus on Paragraph 2. If we can
24 I think it's Paragraph 2, at least in
25 my copy.
1 Q Oh, I see what you're saying. It says Type 2
2 and Type 1.
3 Q Do you see in the middle there where it
4 says, "A nonwired carrier is spectrally
5 given the right to request interconnection that
6 may not be that the same as that used by the
7 wireless cellular carrier and may not be locked
8 into the specific interconnection arrangements
9 requested by a wireless carrier?"
10 A Could you help me find that, please?
11 0591

13 Q Right in the middle of Paragraph 2
14 A Yes, sir I'm reading that right now
15 Q Would you agree with me as a general
16 proposition that a CMRS provider is not required
17 to accept an ILEC's demands on the type of --
18 the form of interconnection that will be
19 provided?
20 A Again, they can choose between Type 1
21 or Type 2 That's their option, yes, sir. I'm
22 not sure what a wireline cellular carrier is
23 I'm just not familiar with this order I'm
24 sorry
25 Q Let's turn to 30 -- ASAP 30 Does this
0592
1 appear to be a memorandum opinion and order
2 adopted February 15, 1989 by the FCC, Document
3 89-60?
4 A Yes, sir
5 Q Have you had occasion to read this
6 particular memorandum opinion and order in the
7 FCC's cellular interconnection proceeding?
8 A This is a pre '96 order I don't
9 recall reading this order, no, sir
10 Q If you could, turn to Paragraph 43
11 It's the second page from the back
12 A Okay I see that
13 Q Take a minute to read that paragraph
14 (Brief pause)
15 A Okay I've read it
16 Q (By Mr. McCollough) Does it appear
17 that the FCC is saying that the policy statement
18 that it issued and is now in the record -- or
19 we've been discussing in ASAP Exhibit 29 applies
20 not only to cellular carriers but all RCCs and
21 Part 22 licensees?
22 A I'm not sure if it's the same policy
23 statement There's no reference back to that,
24 but it appears that they're saying something
25 about that -- about it being a general policy
0593
1 I don't know that it's the same policy statement
2 we referred to earlier
3 Q Let's turn now to ASAP Exhibit 31
4 Does that appear to be a notice of proposed
5 rulemaking issued August 30, 1999 --
6 A Yes, sir
7 Q -- FCC Docket 99-122?
8 A Yes, sir
9 Q This is the numbering -- notice of
10 proposed rulemaking, isn't it?
11 A Notice of proposed rulemaking, yes,
12 sir. Finally, an order I've read
13 Q It's after '96?
14 A Yes, sir Fortunately, the FCC changed
15 everything in '96 so --
16 Q I would like to talk with you about
17 Paragraphs 111 and 112 and Note 174 So if you
18 could, please, just take a moment to read those
19 two paragraphs
20 A Okay

21 JUDGE WALSTON: You said
22 Paragraphs 111 --
23 MR. MCCOLLOUGH. 111, 112 and Note
24 174
25 A All right
0594
1 Q (By Mr. McCollough) Is there anything
2 that the FCC says in Paragraph 111 that you
3 disagree with?
4 A This is an NPRM, so there's not a
5 decision in this order -- in this NPRM
6 Q But this is a description --
7 A It's a description
8 Q -- in this paragraph?
9 A Yes, sir.
10 Q Do you disagree with anything that is
11 set out in this descriptive paragraph?
12 A I agree with this I don't have any
13 dispute with this language
14 Q So you agree that for call waiting
15 purposes, each switch is associated with a
16 particular rate center?
17 A Yes, sir, each switch -- each NPA-NXX
18 Q You agree that for most carrier billing
19 systems the rate centers associated with the
20 switches serving the calling and called parties
21 are used to determine whether a call is local or
22 toll?
23 A I think that's what the FCC said The
24 Texas Commission has recently determined that
25 the NPA-NXX was irrelevant for purposes of
0595
1 determining intercarrier compensation They
2 looked to the location of the called parties in
3 Docket No. 21982
4 Q You're talking about carrier
5 compensation as opposed to retail rating
6 correct?
7 A Yes, sir
8 Q Let's, again, review Paragraph 112 Do
9 you agree that it is typically necessary for
10 each facilities-based service provider to be
11 assigned an NXX code for each rate center in
12 which it provides service?
13 A No, I do not If you'll read the last
14 sentence of footnote 174, the FCC notes that
15 wireless carriers may sometimes further minimize
16 the number of wireline rate centers with which
17 they need to associate their numbers by entering
18 into reverse billing arrangements with local
19 exchange carriers
20 Now, if a CMRS provider were able to
21 just simply open a number, why would there be a
22 reverse toll billing arrangement? I don't
23 understand
24 Q We're going to talk about reverse
25 billing arrangements, but let's look at the
0596
1 sentence immediately above the one you just
2 read "We note that, to enable the rating of

3 incoming wireline calls as local, wireless
4 carriers typically associate NXNs with wireline
5 rate centers that cover either the business or
6 residence of end users "
7 Yes, and I believe when they do that,
8 they have to have a switching entity or point of
9 interconnection within that rate center to
10 receive their traffic.
11 Q Does the FCC say that in this decision?
12 No. I think the central office code
13 assignment guidelines speak to that
14 Q But the FCC has final authority over
15 the CO code administrator correct?
16 A It does have authority over the CO code
17 administrator
18 Now, I would like to point out that a
19 lot of things could be negotiated in a
20 contract -- an interconnection agreement your
21 interconnection agreement -- or ASAP Paging's
22 interconnection agreement with Southwestern Bell
23 may allow ASAP to open multiple NXN codes with
24 one point of interconnection That's not going
25 to be addressed anywhere in any regulatory
0597
1 decisions, but it could be included in your
2 agreement
3 Q But that would still be a violation of
4 CO guidelines under your opinion, wouldn't it?
5 A Under a strict reading of the CO code
6 guidelines, yes, sir
7 I think the purpose of the CO code
8 guideline in that respect is to ensure that
9 carriers have facilities in these rate centers
10 to receive their own calls. Now, if your
11 interconnection agreement -- or if ASAP Paging's
12 interconnection agreement with Southwestern Bell
13 did not require ASAP to have facilities in that
14 rate center to receive their calls -- in other
15 words, if Southwestern Bell agreed to transmit
16 that traffic for ASAP Paging, then that's
17 something the two carriers could negotiate
18 Q When you say "facilities," you mean
19 interconnection facilities, don't you?
20 A I mean public switched telephone
21 network connection, some place for other parties
22 to send public switched codes
23 Q The CO code guidelines don't address
24 facilities as such an interconnection point.
25 A I think they specifically do address
0598
1 points of interconnection
2 Q When they do, they say that the routing
3 and rating points can be different, don't they?
4 A Maybe you can refer me to that section
5 Q 6.2.2 on page 23 of your Exhibit
6 Doesn't that say that the routing and rating
7 points can be different?
8 A No, it says they may have different VEH
9 coordinates
10 Q That's not different?

11 A You and I have different VEH
12 coordinates right now, but we're all in the same
13 room
14 Q We'll just go ahead and forego the
15 discussion of 31
16 You would agree with me that the FCC
17 has never expressly stated a requirement that
18 there be a switch or point of interconnect in a
19 rate center in order to obtain an NXN, don't
20 you?
21 A Could you please restate the question?
22 Q Sure You agree with me that the FCC
23 has never expressly ruled that there must be a
24 switch or point of interconnect in every rate
25 center in which a carrier seeks to have an NXN,
0599
1 don't you?
2 A Yes, sir, I agree
3 Q The issue is live right now at the FCC
4 though, isn't it?
5 A Well, I think some carriers would like
6 to think it's live right now in my opinion,
7 the FCC has already made all the decisions it
8 needs to make on this matter
9 Q Well, there is a petition at the FCC
10 right now in which this precise issue is being
11 discussed. Correct?
12 A Sprint PCS has petitioned for a
13 declaratory order. I think the FCC has already
14 spoken on the matter
15 Q USI has submitted comments on this, did
16 they not?
17 A We did submit comments, and we said
18 that we believed the FCC's policies were clear
19 (ASAP Exhibit No. 33 marked)
20 Q (By Mr. McCollough) You've been handed
21 what has been marked by the court reporter as
22 ASAP Exhibit 33
23 A Yes, sir
24 Q Does that appear to be USI's comments
25 in the Sprint petition for declaratory ruling
0600
1 that we were just discussing?
2 A It appears to be
3 Q Would you agree with me that all of the
4 issues that the parties have been arguing about
5 in this case, other than certification and the
6 "ELCS issue," are presented in the Sprint
7 petition?
8 A I don't know that I would agree all the
9 other -- I think some of the issues are included
10 in the Sprint petition, but I don't believe --
11 again, I think the FCC's policies are clear on
12 this matter. I don't know that they're going to
13 act on this petition. They may never take any
14 action on the Sprint petition. In fact, that's
15 what we've asked them to do in our comments is
16 to not take any action
17 Q USI, in that case, makes assertions
18 regarding the virtual NXN issue that you testify

19 to, don't they?
20 A Did you have a section -- page or
21 section? We do talk with NXXs with different
22 rate points and route points
23 Q Well, on Page 7, there's a reference to
24 the CO code guidelines
25 A Yes, there is
0601
1 Q On Page 8, there's further discussion
2 of the CO guidelines
3 A Yes, there is
4 Q JSI and others in that case have
5 asserted that what Sprint is trying to do is use
6 a virtual NXX, have they not?
7 A I'm not sure that we talked about
8 virtual NXXs in our comments
9 Q Have you read the comments the other
10 parties have made?
11 A I've read some of them I've read most
12 of them
13 Q There was discussion of virtual NXXs in
14 some of those comments, weren't there?
15 A I think there may have been I think
16 there was I just don't know who said it or in
17 what context they were talking about virtual
18 NXXs
19 Q The issue of access charges -- the
20 applicability of access charges is also
21 addressed, whether access charges apply to
22 certain calls to CMRS providers?
23 A So a wireline call to a wireless call,
24 whether access charges apply?
25 Q Yes, sir
0602
1 A I think what we've said in here is when
2 an IXC carries that call, access charges apply
3 Q That's right On Page 15 -- on Page
4 16, you say that landline calls to numbers
5 outside the local calling scope, as defined by
6 tariff, must be routed to an IXC, and I may be
7 paraphrasing slightly
8 A I don't have any dispute with that I
9 think that's what we -- generally what we've
10 said
11 Q So what you're saying is if a call
12 originates within an ILEC's local area as
13 defined by tariff but goes outside the calling
14 scope as defined in tariff, that the call must
15 be routed to an IXC?
16 A To the customer's presubscribed IXC
17 Q And access charges will apply?
18 A To the IXC
19 MR McCOLLOUGH Your Honor, I
20 would like to offer ASAP Exhibit 33
21 JUDGE WALSTON Any objection?
22 MS BROWN I have none
23 MR STEWART No
24 JUDGE WALSTON ASAP Exhibit No
25 33 will be admitted
0603

1 (ASAP Exhibit No 33 admitted)
2 MR McCOLLOUGH I'll refrain from
3 offering the FCC orders.
4 Q (By Mr McCollough) Let's turn back to
5 your testimony, Pages 15 to 16 You're
6 discussing the FCC local competition order and
7 specifically Paragraph 1044 Correct?
8 A Yes, sir
9 Q Now, you were there discussing the
10 rules regarding intercarrier compensation
11 Correct?
12 A That's correct
13 Q You're not discussing the retail rating
14 of a call to an ILEC's end user in your
15 reference to Paragraph 1044?
16 A Not in my reference to Paragraph 1044
17 I guess I'm merely suggesting that it's a good
18 model for us to construct retail rate --
19 intercarrier compensation
20 Q At Page 16, you suggest some of the
21 possible tests that could be used on Lines 10 --
22 I'm sorry -- Lines 11 through 13. Do you see
23 that? Actually, you basically say the
24 Commission should rely on the alternative
25 approach Now, which alternative approach are
0604
1 you referring to there on Line 11?
2 A The alternative approach is the use of
3 the -- if you cannot determine the physical
4 location of the customer at the time of the
5 call, it is to use the point of interconnection
6 or the paging terminal as discussed in the TSR
7 Wireless order
8 Q The FCC didn't mention paging terminal
9 in the local competition order, did it?
10 A No, that was in the TSR Wireless order
11 Q We're going to come to that in a
12 minute
13 A I'm sorry I didn't mean to jump
14 ahead
15 Q So which of the two though -- are you
16 saying that the point of interconnect between
17 ASAP and CenturyTel should serve as the means by
18 which to determine whether a call is -- calls
19 that flow over that interconnection are local?
20 A Not, I think, paging -- ASAP Paging's
21 point of interconnect is with Southwestern Bell
22 I don't think it has a point of interconnect
23 with CenturyTel
24 Q If the Commission finds a point of
25 interconnect, wherever it may be, is it your
0605
1 suggestion that the Commission should use that
2 to make a determination whether calls between
3 the parties are local or not?
4 A I think what I'm saying is that under
5 the Mountain decision if that point of
6 interconnect is outside of the local calling
7 area for CenturyTel, then CenturyTel is entitled
8 to charge toll to its own customers to cover the

9 cost of transporting that call to Austin
10 Q I'm trying to break this down into
11 checkable chunks for purposes of cross. So, you
12 know, please bear with me. You're talking about
13 the FCC's alternative approach for determining
14 where a mobile call originates -- -- terminates
15 A Yes. You asked me "what alternative
16 approach?" If you'll look at the page before,
17 on line 11, I discuss the TSR Wireless order,
18 and they used a paging terminal, as discussed on
19 line 12.
20 Q Okay. Let's then look at your --
21 A That's the alternative approach to
22 which I was referring -- or one of the
23 alternative approaches
24 Q So you're putting together TSR Wireless
25 order at Paragraph 22 and the local competition
0609
1 order at Paragraph 104?
2 A I'm trying to read those in concert
3 with each other
4 Q Well, the FCC -- the local competition
5 order talks about the point of interconnect, and
6 the TSR Wireless order talks about a paging
7 terminal performing an end-office function
8 A Well, I think the local competition
9 order discusses the physical location of the
10 customer, the physical location of the initial
11 call site or the point of interconnection
12 between the two carriers at the beginning of the
13 call. I mean, there's a lot of things, and what
14 they were trying to do there is to use examples
15 that parties might use to negotiate an
16 agreement
17 Q Would you be comfortable with the
18 Commission adopting one of those three for the
19 test in this case?
20 A I don't think we're trying to negotiate
21 an agreement in this case. If we were, then
22 that would be a good idea. We could negotiate
23 an agreement
24 Q But you say on line 17 that the
25 Commission should rely on the FCC's alternative
0610
1 approach. So I'm trying to figure out what your
2 testimony is.
3 Are you suggesting that the PUC should
4 look at the point of interconnect as a means to
5 determine whether calls between CenturyTel and
6 ASAP are local or not?
7 A I think that's one alternative
8 approach, as well as the paging terminal, as
9 discussed on line 12.
10 Q We'll talk about paging terminal in
11 just a second. If the Commission chose the
12 option of the point of interconnect, then would
13 you agree with me that all calls between Century
14 and ASAP that traverse the point of interconnect
15 would be subject to that rule?
16 A If ASAP established a point of

17 interconnect -- well, I'm not sure I would say
18 all calls, but if ASAP established a point of
19 interconnect with CenturyTel, then -- for those
20 local calls, then I don't think they should be
21 rated as a local call to end users
22 Q So you're saying that if ASAP
23 established a point of interconnect with
24 CenturyTel's San Marcos area, then all calls
25 that originate in Century's territory and are
0611
1 destined to ASAP would be local?
2 A To the three NXs in dispute in this
3 case
4 Q But not to the NXs that are
5 rate-centered in Austin --
6 A Correct
7 Q -- or Bastrop or any of the other --
8 A I think maybe the 222 rate center is
9 already local. Is that the area-wide calling
10 NPA-NXX? I'm sorry. I think there's another
11 one
12 You're correct, it's an NPA-NXX is
13 rate-centered on Houston, it's a toll call,
14 regardless of the location of the point of
15 interconnection
16 Q So then what you're really saying is
17 the Commission should look to the point of
18 interconnect, and then it's still only local if
19 it's a number that is within the local calling
20 area of San Marcos?
21 A I'm saying the FCC -- or the local
22 dialing party rules do not apply to you unless
23 you have a local interconnection arrangement
24 with the company with which you seek dialing
25 parity rights
0612
1 Q Back to TSR. Do you have that order
2 with you?
3 A Not in front of me. It might be up
4 here in one of these -- has it been offered as
5 an exhibit?
6 Q I don't know if it has or not
7 MS BROWN: I don't believe it
8 has
9 MR MCCOLLUGH: I don't think
10 we've ever actually moved this thing in
11 (ASAP Exhibit No. 34 marked)
12 Q (By Mr. McCollough) Sir, you've been
13 handed what's been marked by the court reporter
14 as ASAP 34. Does that appear to be the TSR
15 order that you're citing on page 16 of your
16 testimony?
17 A Yes, sir.
18 Q Let's look at Paragraph 22. Are you
19 with me?
20 A Yes, sir.
21 Q Would you agree with me in this part of
22 the FCC order they're discussing whether paging
23 companies perform termination as defined in
24 51.701(d) of the FCC rules?
0613

25 A I'm sorry Can I read this whole
0610 paragraph and then maybe you can ask me
1 questions?
2 Q Certainly
3 (Brief pause)
4 A Okay Go ahead with your question
5 Q (By Mr McCollough) Do you remember
6 the question?
7 A No, sir
8 Q Would you agree with me that in this
9 part of the FCC order, and specifically
10 Paragraph 22, the FCC is discussing whether
11 paging companies perform termination as defined
12 in 51.701(d) of the FCC's rule?
13 A Generally, I think what they're trying
14 to decide is whether or not a paging terminal
15 is -- meets the "or equivalent facility" test
16 Q For purposes of entitlement to
17 reciprocal compensation under the FCC rules
18 Right?
19 A I think so
20 MS BROWN Your Honor, I would
21 just ask that counsel allow the witness to
22 complete his answer before asking another
23 question
24 MR McCOLLOUGH I apologize
0611 Q (By Mr McCollough) Did you have
1 something more to say?
2 A No, sir, go ahead
3 Q This part of FCC order, and
4 specifically Paragraph 22, does not at all
5 address the rating of a call for either retail
6 purposes or intercarrier compensation, does it?
7 A Say that again The "intercarrier
8 compensation" part is giving me a problem Go
9 ahead and please state the question again
10 Q This particular paragraph does not
11 address at all the issue of retail rating to the
12 calling party, does it?
13 A It does not talk about retail rating
14 Q This particular part of the FCC order
15 does not discuss the rating of a call for
16 carrier compensation either, does it?
17 A I think that's the issue in this
18 case -- is the carrier compensation The issue
19 is whether or not the paging -- at least in this
20 paragraph is whether or not the paging terminal
21 performs a switching -- a transport and
22 termination function entitling it to reciprocal
23 compensation or intercarrier compensation So
24 that's the issue in this paragraph
0612 Q In this paragraph the FCC is not
1 talking about whether a call -- a particular
2 call is local for compensation purposes, is it?
3 A I think the -- for intercarrier
4 compensation purposes
5 Q Yes

7 A I think that's what reciprocal
8 compensation discussions --
9 Q Please, if you can -- I'm just trying
10 to ask a very precise question The FCC is not
11 looking at the location of a paging company's
12 paging terminal to determine whether a call is
13 local under the FCC's rule in this paragraph, is
14 it?
15 A I'm not sure if that's covered in this
16 paragraph I think you're correct -- not in
17 this paragraph
18 Q Changing subjects slightly --
19 MR McCOLLOUGH Your Honor, when
20 we get to the point where we want to take a
21 break, just let me know
22 JUDGE WALSTON Well, I was going
23 to try to go until a quarter till
24 MR McCOLLOUGH That's fine with
25 me
0613 Q (By Mr McCollough) A change of
1 subjects, sir You mentioned reverse billing a
2 little while ago when we were going through some
3 of the FCC orders
4 A Yes, sir.
5 Q Let's talk about that Your testimony
6 also addresses -- or at least has a portion of
7 Southwestern Bell's cellular mobile
8 interconnection tariff I believe it's Exhibit
9 WR-4 Are you familiar with the provisions
10 related to Bell's area-wide calling plan?
11 A I'm fairly familiar I wouldn't
12 consider myself an expert on area-wide calling
13 but --
14 Q Would you agree with me that Bell's
15 area-wide calling plan does not assess usage
16 charges if a call originates from a rate center
17 that is the same as the rate center to which an
18 area-wide calling plan number is centered?
19 A Is that part of my exhibit? I'm not
20 familiar with Bell's charges to other companies
21 for area-wide calling service I think that's
22 what you guys have said in your testimony I
23 don't dispute it
24 Q You didn't include all of Southwestern
0614 Bell's cellular mobile tariff, did you, in your
1 testimony?
2 A No, sir, no, sir
3 (ASAP Exhibit No 35 marked)
4 Q (By Mr McCollough) Do you have what's
5 been marked as ASAP Exhibit 35?
6 A Yes, sir
7 Q Does that appear to be a portion of
8 Bell's cellular mobile telephone interconnection
9 tariff, Section 3, Sheet 2?
10 A Yes, sir
11 Q This is the same tariff that you had a
12 portion included in your testimony Right?
13 A Yes, sir

15 MR MCCOLLUGH Offer 35
16 JUDGE WALSTON Any objection?
17 MS BROWN Your Honor, I will --
18 I would like to reserve the opportunity to
19 supplement for optional completeness
20 JUDGE WALSTON Subject to
21 CenturyTel supplementing it for optional
22 completeness, Exhibit 35 is admitted
23 (ASAP Exhibit No. 35 admitted)
24 Q (By Mr. McCollough) Let's look at
25 Paragraph 3 2 1 under area-wide calling plan
1 Do you see that?
2 A Yes, sir
3 Q The charges for originating traffic
4 under the area-wide calling plan are on a
5 per-minute-of-use basis and applied to only
6 those calls from outside the local calling scope
7 of the CMC's designated rate center
8 A I see that
9 Q Does it, therefore, appear that calls
10 from within the rate center where the CMC has
11 selected the area-wide calling plan number to be
12 are not charged the usage charges?
13 A It appears to be. That's correct
14 Q Did the area-wide calling plan that
15 CenturyTel offered to ASAP back in September
16 contain a similar provision?
17 A I don't know
18 Q Should it have?
19 A I don't know I don't know what was in
20 that agreement
21 Q An area-wide calling plan is not a
22 mandatory offering that ILECs must make to CMCs
23 providers, is it?
24 A That's correct
25 Q So it could go away at any time,
0616 I couldn't it?

23 A Transmitters are not going to change --
24 the area-wide calling plan doesn't affect your
25 transmitters
0617
1 Q It might not affect the location, where
2 you may place a transmitter, where you may offer
3 service?
4 A No, I think your transmitters are going
5 to be located based on your coverage areas and
6 your license
7 Q Isn't it reasonable to conclude that
8 someone may decide what coverage areas to offer
9 based on the underlying cost of the service
10 that's to be provided?
11 A I think you're licensed for a
12 particular area of the state, and whenever you
13 obtain that license, you have to provide service
14 throughout that area. You have to provide
15 paging service. Your ability to receive local
16 calls from customers has no impact on your
17 paging service
18 Q The cost of providing the service,
19 including charges for receiving calls, has no
20 impact on ASAP's ability to provide a retail
21 service to its customers?
22 A No, your ability to provide paging
23 service is not compromised by a wireline
24 customer having to dial 1 to reach your pager
25 Q Don't you agree with me that's going to
0618 significantly reduce the number of calls that
1 would be made to paging customers if they had to
2 dial --
3 A No, a paging call lasts maybe 15
4 seconds. Today's long distance rates are eight
5 cents a minute. It's costing the customer three
6 cents to make a page -- to place a page
7 The FCC has addressed this matter and
8 said it's not necessary to effectuate
9 interconnection Your ability to receive local
10 calls is not necessary to provide paging
11 service. That's what the FCC said in the
12 Mountain order
13 Q They said in the Mountain order that
14 agreement is signed.
15 But if there were such a contract
16 between ASAP and Century, and if ASAP designed
17 its network and its billing and marketing plans
18 around use of that, at the end of the term,
19 CenturyTel could decide to no longer offer the
20 area-wide calling plan, couldn't it?
21 A I'm not sure what network you would
22 build. Under the area-wide calling plan, that's
23 the whole reason for the plan, if you have no
24 network to build. You use other carriers'
25 network and you compensate those other carriers
18 for the use of their network. So there's not,
19 like, you have bunch of sunk network in the
20 ground that you're going to have to -- that you
21 will have no use of
22 Q Are transmitters free?

1 Q (By Mr. McCollough) Do you have what's
2 been handed to you and marked as ASAP Exhibit
3 36?
4 A Yes, sir
0619
25 (ASAP Exhibit No. 36 marked)
24 A Yes, yes.
23 area-wide calling plan?
22 Letter dated November 4, 2002 regarding
21 Q Are you aware of a recent accessible
20 A I occasionally do
19 Southwestern Bell?
18 Q Do you get accessible letters from
17 A I don't think that's what they said
16 could get numbers in local areas. Right?
15 one of the reasons was that paging companies
14 Q They said in the Mountain order that
13 Mountain order
12 service. That's what the FCC said in the
11 calls is not necessary to provide paging
10 interconnection Your ability to receive local

5 Q Is this the Southwestern Bell
6 accessible letter on the area-wide calling plan?
7 A It appears to be, yes, sir
8 Q You've seen this?
9 A I have read this.
10 MR McCOLLOUGH: Offer 36
11 JUDGE WALSTON Any objection?
12 MS BROWN No objection
13 JUDGE WALSTON Exhibit 36 will be
14 admitted
15 (ASAP Exhibit No 36 admitted)
16 Q (By Mr McCollough) Regarding your
17 discussion of virtual NXX at Pages 28 and 30 to
18 32, you're using the same definition of virtual
19 NXX as the FCC, aren't you?
20 A Page 28?
21 JUDGE WALSTON Where are you
22 referring him to, Mr McCollough?
23 A Maybe you can help me
24 Q (By Mr McCollough) Page 26 -- well,
25 here we go. Page 28, Lines 6 through 7 and --
0620
1 A Yes, sir
2 Q -- Page 30, lines -- virtually all the
3 way over to Page 32 on Line 8
4 A What was the question again?
5 Q Are you using the same definition of
6 virtual NXX as the FCC?
7 A I think there's a certain -- I think I
8 may have -- I may be expanding on the use of
9 virtual NXX as by used by the FCC
10 Q Let's talk about how the FCC has
11 defined it. The FCC did define it in the notice
12 of proposed rulemaking in the carrier
13 compensation proceeding, didn't it?
14 A For wireline carrier compensation --
15 for wireline carriers, yes, they did
16 (ASAP Exhibit No 37 marked)
17 Q (By Mr McCollough) First of all, a
18 foundation question The FCC has sought
19 comments on the use of virtual NXX codes, has it
20 not?
21 A I believe so
22 Q They've not yet issued a decision in
23 the rulemaking in which they sought comment,
24 have they?
25 A No, sir, they have not
0621
1 Q So the FCC presumably will dispose of
2 the issue of virtual NXXs on a formal basis,
3 rulemaking-wise, when it issues its rule in
4 Docket 01-92?
5 A Well, the FCC did refer the states to
6 their authority under the delegated authority
7 granted by the FCC to reclaim codes for
8 violations of the central office code assignment
9 guidelines. In particular, the FCC referred
10 back to the Maine decision and appeared to
11 encourage states to reclaim codes whenever they
12 found violations So I think they've opened up

13 the arena for states to start taking action on
14 their own motion
15 Q Let's talk about the definition of
16 virtual NXX Would you agree with me that the
17 FCC defines virtual NXX in Footnote 188, Page
18 43, the second page of this exhibit?
19 A For local exchange carriers, yes, sir
20 Q Would you agree with me that they look
21 at the entire block to determine whether a code
22 is a virtual code?
23 A Is that in this?
24 Q I'm just asking.
25 A I don't think they look to the entire
0622
1 block
2 Q You don't think they do?
3 A I'm not sure
4 Q So a virtual NXX could be any number
5 within a 10,000 block that is assigned to a
6 particular geographic area where the customer is
7 in a different area?
8 A That would be a virtual telephone
9 number I'm not sure it would be a virtual NXX
10 Q So then a virtual NXX is in fact the
11 entire NXX block Right?
12 A Well, I think generally that's the way
13 people have classified it You could have one
14 customer who is physically located within the
15 rate center and 9,999 customers who aren't I
16 would still consider that a virtual NXX.
17 Q You're not contending that all of
18 ASAP's numbers are virtual NXXs, are you?
19 A No
20 Q In fact, you agree that some of ASAP's
21 customers are within the rate center to which
22 these NXXs are assigned, don't you?
23 A Some of the wireless customers appear
24 to be physically located within the rate
25 center -- well, they -- at least their billing
0623
1 addresses appear to be
2 Q You have no information that they're
3 never physically located within the rate center,
4 do you?
5 A I have no information one way or the
6 other on that
7 Q You mention that you've expanded on the
8 FCC's definition What have you added to it?
9 A Well, I've added the disparity between
10 routing and rating points in a wireline -- in a
11 wireless environment
12 Q The FCC doesn't mention that in this
13 notice of proposed rulemaking, does it?
14 A No, that issue is -- has kind of been
15 discussed in the Sprint PCS petition that we
16 talked about earlier
17 Q Interestingly, the Sprint PCS petition
18 is in the same docket number, isn't it?
19 A Oh, yes, it is I forgot about that
20 They're actually in the same docket

21 Q On page 30, line 14, you talk about a cross-subsidy from CenturyTel customers to the benefit of ASAP's customers. Do you see that?

23 A Yes, sir, I discuss that.

24 JUDGE WALSTON: Mr. McCollough,

25 0624

1 were you going to offer exhibit 37?

2 MR. MCCOLLOUGH: Again, your

3 Honor, it's an FCC order. I guess actually

4 you're probably right because that definition, I

5 think, is important. So I would go ahead and

6 offer this particular exhibit, 37.

7 JUDGE WALSTON: Any objections?

8 MS. BROWN: Your Honor, I would --

9 I believe if we're going to offer any part of

10 that order we ought to offer the whole order.

11 JUDGE WALSTON: Well, I'll -- if

12 that's your only objection, I'll admit it to --

13 allow you to supplement it if you think you need

14 to under optional completeness. So with that

15 understanding, Exhibit 37 will be admitted.

16 (ASAP Exhibit No. 37 admitted)

17 JUDGE WALSTON: Why don't we go

18 ahead and take our break. It's 10 till 11. Why

19 don't we take a 15-minute break, and we'll

20 resume at 5 after 11. We'll go off the record

21 at this time.

22 (Recess 10:52 a.m. to 11:16 a.m.)

23 JUDGE WALSTON: We'll go back on

24 the record at this time. Mr. McCollough, you

25 can continue.

0625

1 MR. MCCOLLOUGH: Thank you.

2 (By Mr. McCollough) Mr. Robinson,

3 let's talk a little bit more about the TSR

4 orders and the Mountain orders. When you -- let

5 me try at this way to speed things up.

6 In the TSR order, would you agree with

7 me that the FCC was saying that an ILBC was

8 allowed to assess toll charges against its own

9 end user when its end user dialed a number that

10 plan, even if it was within the MTA?

11 Q Yes, sir.

12 In the TSR Wireless order?

13 A Yes, sir.

14 Maybe you can refer to where in the TSR

15 Wireless order. It would be helpful. I'm more

16 familiar with the Mountain order so I apologize

17 for that.

18 Q The Mountain order refers back to the

19 TSR order. Right?

20 A In certain respects it does, yes, sir.

21 Let's start with the TSR order.

22 Paragraph 31 of the TSR order -- do you see it?

23 A Yes, sir.

24 Would you agree with me that what the

25 FCC was saying is, "Yes, a call can be local for

0626

1 carrier compensation purposes, i.e., within the

2 MTA, but an ILBC can still assess toll against

3 its end users at the end user is making a call

4 to an NXX associated with a rate center that is

5 not local to the ILBC's customers?"

6 A Can I have a second to read this

7 paragraph?

8 Q Yes.

9 A You're referring to -- if we could go

10 to Paragraph 31, six lines from the bottom,

11 starting with the sentence, "However, nothing

12 prevents U.S. West from charging its end users

13 toll for calls completed over the Yuma-Flagstaff

14 area."?

15 Q Yes.

16 A Yes, sir.

17 Q There's a footnote, 107, where the FCC

18 assumed that a call from Yuma, Arizona to

19 Flagstaff, Arizona would be billed as a toll

20 call to the caller placing the call?

21 A Well, it could be. I think the next

22 sentence in the paragraph says, "Similarly,

23 Section 51.703(b) does not preclude TSR and

24 U.S. West from entering into an area-wide

25 calling or reverse billing arrangement whereby

0627

1 TSR can buy down the cost of such toll calls."

2 Q But the FCC is talking about calls from

3 the originating callers's perspective -- the

4 ILBC's end user customer. That is a toll call.

5 Right?

6 A I'm just not sure.

7 Q Well, in footnote 107, the FCC is

8 assuming that in the example of Yuma to

9 Flagstaff that that's a toll call?

10 A That's what they're assuming, would be

11 billed as a toll call. I just -- the

12 reference -- the footnote references one thing,

13 but the language in the text of the order refers

14 just to the Yuma-Flagstaff. It doesn't say

15 where the call originated.

16 Q We're going to get to the Flagstaff. It

17 in a second. That gets into the issue that was

18 involved in Mountain. Right?

19 A There were TIS involved in Mountain.

20 Q Well, let's just see if we can agree

21 in Paragraph 31, the FCC is saying, "Well, a

22 call may be local for carrier purposes because

23 it's within the MTA, but an ILBC can still

24 charge its end users toll for toll calls, and it

25 the CMRS provider wants to avoid that, it can

0628

1 get a reverse billing arrangement."

2 A That's sort of what they've said in the

3 TSR Wireless. I would agree, generally, in the

4 TSR Wireless order. I think the Mountain order

5 expanded on this.

6 Q We'll get to that, but the FCC never

7 said that an ILBC can charge its end users toll

8 for a call to an NXX that is associated with a

9 rate center that is local to that end user if no

10 dedicated facilities are obtained from the ILBC,

11 has it?
12 A That's exactly what it said in the
13 FCC -- in the Mountain order It said that they
14 could charge toll to their own end users
15 regardless of the NXX designation when no
16 transport facilities existed to transport that
17 call back to the paging customer
18 Q Let's now look at Mountain
19 A Could I get a copy of Mountain?
20 Q That would be useful, wouldn't it?
21 (ASAP Exhibit No 38 marked)
22 Q (By Mr McCollough) When you're
23 reviewing for the Mountain case, would the order
24 on review do or do you want the memorandum?
25 A The order on review would do
0629
1 Q Do you have the Mountain order on
2 review before you now?
3 A Yes, sir, I do
4 Q First of all, Mountain had obtained
5 from -- some dedicated T1 facilities from Qwest,
6 had it not?
7 A Yes, sir
8 Q While Mountain may have had NXXs in
9 various rate centers, Mountain was requiring
10 Qwest to transport calls from rate centers up to
11 its single point of interconnect that was
12 outside the rate center Right?
13 A What do you mean "they were requiring
14 Qwest to transport those calls"? They had
15 purchased T1s to transport those calls, but they
16 weren't paying for the T1s
17 Q The question before the FCC was whether
18 Mountain had to pay for the T1s Right?
19 A That was one of the questions The FCC
20 said you could either pay for those T1s or you
21 could have let Qwest charge toll to their own
22 end users
23 Q The reason that FCC used was that Qwest
24 was physically transporting calls outside of the
25 relevant local calling area Isn't that
0630
1 correct?
2 A I don't think Qwest was I think that
3 the T1s were leased by Mountain So whenever
4 they lease those T1s, in my opinion, Mountain is
5 transporting those calls outside the local
6 calling area Now, if they weren't paying for
7 those T1s, maybe you could say Qwest was
8 actually transporting those calls
9 Q Take a look at Paragraph 5
10 JUDGE WALSTON Just for the
11 record, Mr McCollough, did you want to number
12 this as Exhibit No 38 that he's referring to?
13 MR MCCOLLOUGH I thought I did
14 JUDGE WALSTON If you did, it
15 wasn't stated in the record
16 Q (By Mr McCollough) We're talking
17 about what's been marked as Exhibit 38?
18 A Yes, sir

19 MR MCCOLLOUGH Thank you, Your
20 Honor
21 Q (By Mr McCollough) Take a look at
22 Paragraph 5, and I'm going to read you the
23 second sentence "As the Commission pointed out
24 in the TSR Wireless order, wide-area calling
25 allows a paging carrier to subsidize the cost of
0631
1 calls from an LEC's customer to the paging
2 carrier's customers when the LEC must complete
3 those calls by transporting the calls from one
4 local calling area to another "
5 A I see the sentence
6 Q That sentence is a characterization of
7 one of the holdings in the TSR case Right?
8 A Yes, sir I'm not sure what the
9 question -- are we talking about who is
10 transporting this call, because if you look
11 further down in that paragraph --
12 JUDGE WALSTON Mr Robinson, I
13 don't think there's a question on the table now
14 Why don't you wait for Mr McCollough to ask you
15 questions
16 Q (By Mr McCollough) Mountain wanted to
17 not pay for that T1 -- right -- among other
18 things?
19 A That's one of the things that was --
20 Q The FCC was saying, "No, where the ILEC
21 is transporting the call between local calling
22 areas, the paging carrier is responsible, or it
23 can let the ILEC assess toll " Right?
24 A I think what they said is the paging
25 carrier can either purchase those T1s and pay
0632
1 for them, or they can let the LEC charge toll to
2 its customers
3 Q But this all revolves around when the
4 ILEC facilities are used to transport a call
5 between local calling areas Right?
6 A No Qwest was -- well, in my opinion,
7 Mountain leased those facilities from the ILEC
8 Now, if you consider those still the ILEC
9 facilities, I disagree
10 I think when you lease a facility from
11 another carrier, you have the right to use that
12 facility So that's your facility. You may not
13 physically own that facility, but you own at
14 least some rights to that facility
15 So in this Mountain case, Mountain had
16 its own facilities out to Walsenberg, Colorado
17 Springs and Pueblo Now, they could either pay
18 for those facilities and carry the traffic back
19 to their switch, or they could let Qwest charge
20 toll to its own customers because Qwest was
21 going to have to pay to carry that traffic back
22 to the switch
23 Q From one calling area to another
24 calling area?
25 A Yes, sir, I believe so
0633

1 Q So when the ILEC doesn't have to
2 transport outside of the local calling area,
3 then at least the T1 portion of the Mountain
4 decision really doesn't apply, does it?
5 A I'm not sure I understand the question
6 it seems kind of vague
7 Q Well, the T1 portion of the Mountain
8 decision addressed when calls were being
9 transported over ILEC facilities to an area
10 outside of the local calling area Right?
11 A No You keep saying "ILEC facilities"
12 These were Mountain's facilities
13 Q Obtained from the ILEC --
14 A Correct
15 Q -- under special access?
16 A They leased them They're dedicated to
17 Mountain's use They're Mountain's facilities
18 Q So the issue was the cost of transport
19 outside of the local calling area Right?
20 A The issue was whose facilities were
21 going to be used to transport that traffic
22 outside of the local calling area
23 Q And, therefore, who paid for them
24 Correct?
25 A I'm not sure it was who paid for it I
0634
1 think on the T1s it was who paid for it
2 Q The FCC, in the Mountain decision and
3 the TFR decision never said that the ILEC can
4 impose toll if a call is to an NXX that is local
5 to the calling party and the ILEC does not bear
6 the burden of transport outside the local
7 calling area, has it?
8 A I don't think it dealt with bearing the
9 burden of transport I said -- I think what
10 they said is when it -- when the transport or
11 when the termination of the call occurred on the
12 CMRS provider's network outside the local
13 calling area.
14 Q In Mountain, there was some discussion
15 of imposing toll The FCC was really talking
16 about that as an alternative to Mountain's
17 physical interconnection architecture, wasn't
18 it?
19 A They were using it as an alternative
20 for Mountain to receive the transport it sought.
21 I think that's exactly what these two parties
22 are trying -- or at least CenturyTel has tried
23 to offer to ASAP Paging, is either a T1 at the
24 hut in San Marcos or reverse toll billing
25 Q Let's talk about the various forms of
0635
1 CMRS interconnection You mentioned Type 1 and
2 earlier
3 A Yes, sir
4 (ASAP Exhibit No 39 marked)
5 Q (By Mr McCollough) Sir, you've been
6 handed what has been marked as ASAP Exhibit 39
7 Does this appear to be a notice of proposed
8 rulemaking and notice of inquiry in CC Docket

9 94-54, Document No FCC 94-145, in the matter of
10 equal access and interconnection obligations
11 pertaining to commercial mobile radio services?
12 A It does
13 Q Have you seen this particular order
14 before?
15 A I don't believe so
16 Q Didn't we use this in the deposition?
17 A Oh, sorry We may have I've read a
18 lot of orders, and it's hard to remember exactly
19 which ones I've read or not
20 Q I understand Let's turn to Paragraph
21 105, which is on the second page of this
22 exhibit Doesn't that paragraph appear to be
23 describing the three different types of
24 interconnection that ILECs are obligated to
25 provide to CMRS carriers on request?
0636
1 A I think that generally this kind of
2 describes the Type 1, Type 2A and Type 2B
3 interconnection
4 Q Are these consistent with whatever
5 description you may have had in mind when you
6 were talking about the forms of interconnection
7 in your testimony?
8 A Yes, sir
9 MR MCCOLLUGH Offer 39
10 JUDGE WALSTON Any objection?
11 MS BROWN No objection
12 JUDGE WALSTON ASAP Exhibit 39 is
13 admitted
14 (ASAP Exhibit No 39 admitted)
15 MS BROWN Your Honor, once
16 again, I would like to request the right of
17 optional completeness with respect to this
18 exhibit
19 JUDGE WALSTON That would be
20 fine
21 Q (By Mr McCollough) I believe you have
22 indicated that one of the options available to
23 ASAP is Type 1 interconnection with CenturyTel
24 in San Marcos Correct?
25 A Yes, sir
0637
1 Q Type 1 interconnection is line site
2 interconnection, similar to that which is
3 provided to retail PBX-like customers Right?
4 A That's one type of Type 1 Generally
5 that's -- it's a PBX-type service with DID
6 numbers
7 Q If a CMRS provider has its own
8 end-office switch, then Type 1 interconnection
9 really isn't the way it wants to go Right?
10 A Not necessarily. I disagree with that
11 Q You disagree with that?
12 A Yes, sir
13 Q Why would you want to have to have
14 PBX-like functionality in your end-office switch
15 if you've already got Class 5 end-office
16 functions?

17 A I'm just -- I don't know that every
18 CMRS carrier is going to choose that, maybe so,
19 maybe not. That's the reason they have options
20 under these two choices.
21 Q Maybe my question was unclear. If the
22 CMRS carrier --
23 MS BROWN. Your Honor, once
24 again, Mr. McCollough keeps stepping on the last
25 part of every answer that Mr. Robinson is
0638
1 giving, and I'm not sure the -- what our record
2 is going to look like.
3 JUDGE WALSTON Mr. Robinson, I
4 think it would help, too, if you would keep your
5 voice up because it's trailing off, and
6 sometimes I'm not sure if you're through or not.
7 That may be Mr. McCollough's problem so -- were
8 you finished with that answer?
9 A I just wanted to say that the CMRS
10 provider is able to choose the type of
11 interconnection it wants, and if it chooses a
12 Type 1, then I'm sure it has a reason for that
13 choice.
14 Q (By Mr. McCollough) But if the CMRS
15 carrier has chosen to go ahead and make the
16 investment of having an end-office Class 5
17 switch, Type 1 interconnection really isn't
18 something that would interest that CMRS carrier
19 Correct?
20 MS BROWN. Your Honor, objection.
21 asked and answered.
22 MR. MCCOLLOUGH Your Honor, when
23 I asked --
24 JUDGE WALSTON I'll overrule the
25 objection. Go ahead.
0639
1 A I'm really not sure what's going to
2 drive a CMRS provider to choose between one or
3 the other. I don't know.
4 Q (By Mr. McCollough) Would you agree
5 with me that, as a general proposition, a CMRS
6 carrier would not have Type 2B connections,
7 i.e., high-volume end-office direct trunking if
8 it did not also have Type 2A interconnection?
9 A Generally I think that's a true
10 statement.
11 Q If a CMRS carrier has chosen to
12 exercise its rights to have a single point of
13 interconnect within the LATA, then it would use
14 Type 2A, and where necessary, Type 2B
15 interconnection. Right?
16 A Where does the CMRS provider have the
17 right to choose one point of interconnection
18 within a LATA? Where is that right granted to
19 ASAP Paging?
20 Q Do you dispute that that right exists?
21 A I'm just asking you to show me where it
22 exists. I dispute that ASAP has an
23 interconnection agreement with Southwestern Bell
24 that grants them that right.

25 Q Would you agree with me the FCC rules
0640
1 generally allow a requesting carrier to select
2 any technically feasible form of
3 interconnection, which can include having a
4 single point of interconnect in the LATA?
5 A ASAP Paging is not a requesting
6 carrier. They have not requested an
7 interconnection agreement from anybody that I'm
8 aware of.
9 Now, if they chose to exercise their
10 rights, that may be something that's included in
11 their interconnection agreement. Without the
12 interconnection agreement, I just don't think
13 there are any rights for ASAP Paging.
14 Q Would you agree with me that the
15 arrangement between CenturyTel and its customers
16 with regard to retail rating of a call is
17 governed by CenturyTel's tariff?
18 A Yes, sir, generally.
19 Q So if the tariff says a customer can
20 call a particular exchange and not pay toll,
21 then that should be the controlling result.
22 Right?
23 A That's not always true.
24 Q There's something outside of the
25 tariff --
0641
1 A Yes, sir.
2 Q -- that can modify that?
3 A Yes, sir. The Commission's
4 interconnection rule -- now, we need to try and
5 define -- or draw a distinction between wireline
6 and wireless services, but the Commission's
7 interconnection rule, with regard to wireline
8 services, allows a CLEC to obtain the same local
9 calling scope for its customers -- in our
10 example, Lockhart -- if they so choose, but a
11 CLEC is able to define its own local calling
12 scopes, and it is free from all decisions and
13 the Commission for its own determinations.
14 So if a CLEC chooses not to include San
15 Marcos within its Lockhart local calling scope,
16 then that's the CLEC's choice, and likewise, the
17 call from San Marcos to Lockhart, the CLEC may
18 choose to collect terminating access rates for
19 calls made from San Marcos rather than forego
20 those local -- rather than forego those access
21 charges.
22 Q I'm sorry. It sounded to me like you
23 were, at least in the latter part of that,
24 talking about carrier compensation and not
25 retail rating.
0642
1 A Yes, I was, and the reason a CLEC would
2 choose not to include San Marcos in their local
3 calling scope, or at least one reason may be
4 that they want to collect access rates for those
5 calls.
6 MR. MCCOLLOUGH I'm sorry, Your

7 Honor I'm trying to find something
8 (Brief pause)
9 MR MCCOLLOUGH One
10 A Are you looking for the interconnection
11 rule?
12 Q (By Mr McCollough) No
13 MR MCCOLLOUGH If I might
14 approach the witness, Your Honor, I only have
15 one copy of this
16 JUDGE WALSTON Sure
17 Q (By Mr McCollough) Mr Robinson, I'm
18 showing you PUC Substantive Rule 26.207(c), and
19 I would ask you to read it into the record
20 (c)?
21 Q Yes, sir
22 A "Effective tariff. No utility shall
23 directly or indirectly demand, charge or collect
24 any rate or charge or impose any
25 0643
1 classifications, practices, rules or regulations
2 different than those prescribed in its effective
3 tariff with the Commission -- filed with the
4 Commission " The 26.272 interconnection --
5 MR MCCOLLOUGH Excuse me Your
6 Honor, that's outside the scope of the question
7 JUDGE WALSTON: Wait until he asks
8 you a question
9 Q (By Mr McCollough) Are you familiar
10 with CenturyTel's local exchange tariff?
11 A Not real familiar with it I think
12 I've looked at some of it
13 Q Are you aware of any provision that
14 provides an exception to the local rating of a
15 call to lockhart?
16 A 26.272, the substantive rule, provides
17 that exception
18 Q I'm talking about the tariff, sir Are
19 you aware of anything in the tariff that --
20 A I'm not aware of anything in the
21 tariff.
22 Q Would you agree that the tariff looks
23 to the NXK and the rate centers associated with
24 it to determine whether a call is local for
25 retail purposes?
1 A I'm not sure it looks to the rate
2 centers I'm sorry I'm not sure it looks to
3 the NXK I think it looks to exchanges if I
4 remember correctly.
5 Q Changing subjects, you're not
6 contending that ASAP is acting like an IXC, are
7 you?
8 A In some respects, I am today You're
9 probably going to refer back to my answer in the
10 deposition which said I didn't. Maybe I should
11 explain and I can help you guys My
12 supplemental testimony kind of addresses this
13 issue.
14 MR MCCOLLOUGH Objection, Your

15 Honor I think he's fixing to refer to
16 something that --
17 A No, I'm referring to the question and
18 answer that was admitted
19 Q (By Mr McCollough) Okay
20 A In particular, the answer regarding the
21 ASAP -- the location of ASAP's transmitters, as
22 identified by ASAP in response to CenturyTel's
23 RFI Question No 15, and 12 of those locations
24 are within the Dallas MTA Seven are located
25 within the Houston MTA, and only one is located
1 in the San Antonio MTA
2 with regard to calls identified in WR
3 Exhibit 6 from customers outside of the MTA
4 associated with the transmitter, I think ASAP is
5 acting as an interexchange carrier, in other
6 words, for interMTA calls
7 Q Why are you looking to the location of
8 the transmitter rather than the location of
9 customer?
10 A That's all I have You guys --
11 Q I'm sorry
12 A You guys have said you don't know where
13 your customer is. So all we have is
14 transmitters That's as close as I can get to
15 the customer
16 Q Isn't it true that we also said that
17 all of our transmitters fire simultaneously?
18 A I think that's what you say
19 Q Isn't it true that ASAP said that it
20 may not know where its customer is within a
21 coverage area?
22 A I think that's what I just said, and
23 without the location of the customer, I've
24 relied on the location of the transmitter
25 Q But how do you know which transmitter
1 reaches the customer's pager for any particular
2 call?
3 A Nobody knows that You have to use
4 something to determine the physical location, a
5 proxy. Unless you guy can tell us where the
6 customers are located, we have to use some
7 proxy
8 Q Well, is there any proxy that
9 CenturyTel has put forward that would result in
10 a retail rating of any of the calls to ASAP as
11 local?
12 A Without -- as long as CenturyTel is
13 going to be obligated to transport that
14 traffic -- or the transport of that traffic is
15 going to -- the call is going to terminate
16 outside of CenturyTel's area, and they may
17 maintain responsibility for the transport, then
18 probably, no, they have not
19 Q But if CenturyTel does not have
20 responsibility for the transport outside of its
21 area, then --
22 A If ASAP were -- I think the offer by

23 Mr. Navarrette was that if ASAP were going to
24 meet them at the hut then they could get retail
25 rating and a local call

0647

1 Q What if ASAP has made arrangements
2 through another carrier, such as Southwestern
3 Bell?

4 A Well, then Southwestern Bell wouldn't
5 have blocked this call in the first place

6 Q Southwestern Bell blocked a call?

7 A These calls were blocked at the
8 Lockhart end office, as I understand
9 Mr. Novack's testimony in this case.

10 Q Isn't that because, contrary to the
11 instructions of the LERG, CenturyTel routed it
12 to the end office rather than the routing point
13 specified in the LERG for these numbers?

14 A I don't think that's contrary to the
15 instructions in the LERG. It's a common
16 practice in Texas that carriers route calls to
17 the designated rate center, and it's --
18 particularly with regard to ELC and EAS trunks
19 when there are dedicated facilities for traffic
20 to that rate center, carriers route traffic over
21 those dedicated facilities

22 Q You have no opinion on whether ASAP
23 must be certificated to provide connections to
24 ISPs, do you?

25 A I think ASAP must be certificated to

0648

1 provide any telecommunications service that is
2 not commercial mobile radio service

3 Q IXCs are not required to be certified
4 in Texas, are they?

5 A They're required to register as a
6 nondominant carrier

7 Q That's not certification, is it?

8 A Right. That's not local service
9 either

10 MR. MCCOLLUGH: Can I approach
11 the witness?

12 Q (By Mr. McCollough) In your deposition
13 on Page 167, Line 10, the question is, "And are
14 you saying that the service that ASAP provides
15 to ISPs is something that requires a state
16 certificate?" Your answer beginning on Line 13
17 is?

18 A It says, "I'm not sure I know the
19 answer to that right now."

20 Q So you've changed -- you actually have
21 come up with an answer since the time of your
22 deposition?

23 A Well, my opinion is that any time ASAP
24 provides a service -- a local service that's not
25 commercial mobile radio service it should obtain

0649

1 a certificate from the Commission. ASAP's
2 license from the FCC only authorizes it to
3 provide commercial mobile radio service

4 Q So your contention is what ASAP is

5 providing to the ISPs is local service?

6 A It's local connectivity

7 Q Is it local service?

8 A How do you define local service?

9 Q Are you familiar with the statutory
10 definitions in Texas?

11 A Generally

12 Q Under those statutory definitions, is
13 what ASAP is providing to the ISPs basic local
14 telecommunications service?

15 A Basic local -- I didn't say basic local
16 telecommunications service. I said local --

17 Q Is it local telecommunications?

18 A I said it was local connectivity

19 MS. BROWN: Your Honor, once

20 again, Mr. McCollough is interrupting the
21 witness' response

22 JUDGE WALSTON: Both of you need
23 to wait. Make sure he gets his question out
24 before you start answering, and, Mr. McCollough,
25 let him finish his answer before you ask the

0650

1 next question

2 MR. MCCOLLUGH: Yes, sir

3 Q (By Mr. McCollough) "Local
4 connectivity" is not a phrase that's used in the
5 statute, is it?

6 A I'm not sure

7 Q I'm a little confused. Maybe you can
8 help me out. How is it that what ASAP is

9 providing to the ISPs is local service but the
10 calls from San Marcos to ASAP's Lockhart number
11 is not a local call for retail rating purposes?

12 A Because the service is local
13 connectivity inside of Austin. Calls to those
14 telephone numbers from customers in Austin are
15 local calls

16 Q At Page 21, you say the FCC has never
17 authorized CMRS providers to provide service to
18 ISPs

19 MS. BROWN: Could I have the page
20 reference again?

21 MR. MCCOLLUGH: Page 21

22 A Where is the line, please?

23 Q (By Mr. McCollough) On Line 1 through
24 Line 2. Do you see that?

25 A Landline communication services to

0651

1 ISPs, yes

2 Q The FCC has never expressly ruled CMRS
3 providers cannot do this, has it?

4 A I don't think they ever envisioned that
5 a CMRS provider would actually provide a
6 landline --

7 MR. MCCOLLUGH: Objection.

8 nonresponsive

9 JUDGE WALSTON: If you could, just
10 answer his question

11 A I'm not aware of any decisions

12 Q (By Mr. McCollough) Change of subjects

13 again Assume you have a user -- a mobile user
14 who, like me, uses a cell phone that has
15 outgoing e-mail capabilities. Are you with me
16 so far?
17 A Yes, sir.
18 Q Assume I attempt to send an e-mail from
19 my cell phone to some e-mail recipient
20 A Yes, sir.
21 Q How can that e-mail be delivered to its
22 destination if the CMRS provider does not have a
23 connection to the ISP?
24 A I would consider that sort of service
25 incidental, auxiliary or ancillary to CMRS
0652
1 service, in that it uses a wireless spectrum
2 The service that ASPs provides to ISPs uses no
3 portion of the wireless spectrum
4 Q Will you agree with me there has to be
5 some connection to an ISP in order for -- at
6 least for e-mails to be sent and received from
7 mobile devices. Right?
8 A Some connection to ISPs?
9 Yes, sir.
10 A Are you talking about a customer -- I'm
11 sorry -- a noncustomer of ASPs? I'm just
12 trying to -- my problem with that is that I'm
13 not sure that ASPs' paging needs connection to
14 ISP. I think the customer -- the place -- who
15 is using a regular local dial-up account to
16 place an e-mail or send an e-mail to one of your
17 paging customers needs a connection to their
18 ISP
19 Q How can ASPs send a text message to its
20 paging customers if it is not somehow connected
21 to an ISP?
22 A It would probably be connected to an
23 ISP or it could have its own server with its own
24 connection to an ISP
25 Q So there has to be a connection to an
0653
1 ISP and the Internet?
2 A There has to be some connection to the
3 Internet
4 Q On Page 22 of your testimony, on lines
5 10 through 18, you're talking about the Western
6 Wireless case
7 A Yes, sir.
8 Q You agree with me the Commission ruled
9 that Western Wireless did not have to get a
10 certificate to provide the services in issue to
11 its customers in Texas. Right?
12 A The fixed wireless services I would
13 consider them fixed. I think Western Wireless
14 contended they were mobile, but they were
15 wireless services
16 Q One of the conditions the Commission
17 imposed in order for Western Wireless to be
18 eligible to receive USF funds was that its
19 service have data capability. Do you recall
20 that?

21 A They required them to meet the quality
22 of service standards, and it's enunciated in the
23 Commission's quality of service rules
24 Q Which included a certain baseline data
25 capability. Right?
0654
1 A It requires a data connection speed of
2 14.4 kilobytes on all switched access lines. I
3 think is how it's used
4 Q That was so that users could send and
5 receive faxes over their fixed wireless service?
6 A I think there's a number of reasons I
7 don't think 14.4 is required to send faxes. I
8 think that's probably something -- I think the
9 14.4 requirement is probably -- the main
10 intention of it was to get Internet
11 connectivity
12 Q Well, when Western Wireless' fixed
13 wireless customers tried to use their 14.4
14 capability to use the Internet, don't you agree
15 with me that Western Wireless had to have a
16 connection to an ISP so that those calls would
17 go through?
18 A No. Western Wireless' customer picks
19 up the phone, dials a Southwestern Bell
20 telephone number that has an Internet provider
21 on the other end of it. That's an Internet
22 provider connection by Western Wireless',
23 customer. Western Wireless is not providing the
24 service to the Internet service provider
25 Q Do you know that?
0655
1 A No. I'm just saying that that's an
2 example of how a Western Wireless customer can
3 call their ISP without Western Wireless
4 providing connectivity to the ISP.
5 Q The Commission, in the Western Wireless
6 case, didn't say that Western Wireless was
7 precluded from allowing an ISP to connect
8 directly to it and to have the use of some of
9 Western Wireless' NXSS, did it?
10 A That issue was not before the
11 Commission
12 Q The Commission did make sure to ensure
13 that Western Wireless customers would have a
14 baseline data connectivity speed for accessing
15 the Internet?
16 A They did require them to meet the
17 quality of service standards, which included the
18 data connection speed
19 Q On Page 21, beginning on line 13, you
20 have a discussion of the CT Cube discussion in
21 Docket 20028
22 A Yes, sir.
23 Q You acknowledge on lines 14 to 15 that
24 the decision in that proceeding was limited to
25 the issue of reciprocal compensation
1 A The decision was there was some
2 discussion that expanded that, in my opinion

3 Q The CT Cube decision was before the
4 FCC's order and the ISP remand, wasn't it?
5 A I believe so
6 Q The CT Cube decision involved a CMRS
7 provider that had Type 1 interconnection and did
8 not have its own end-office switch, didn't it?
9 A I don't know I don't know I'm
10 sorry
11 Q The Commission, in its ruling on
12 reciprocal compensation, based its decision on
13 the fact that CT Cube did not transport or
14 terminate, and, therefore, was not entitled to
15 reciprocal compensation Right?
16 A I think they said they may not legally
17 transport and terminate such traffic
18 (ASAP Exhibit No 40 marked)
19 Q (By Mr McCollough) Have you been
20 handed what has been marked as ASAP Exhibit 40?
21 A Yes, sir
22 Q Does this appear to be the arbitrators'
23 decision in the CT Cube case?
24 A It appears so, yes
25 Q Take a look at Page 11 under

0657

1 arbitrators' ruling Are you there?
2 A Yes, sir
3 Q The second sentence, "CT Cube neither
4 transports nor terminates traffic originating on
5 GTSW's network destined for CT Cube's ISP " Do
6 you see that?
7 A I see that language
8 Q Take a look now at Page 13 The first
9 sentence, "It is clear that CT Cube does not
10 terminate Internet traffic originating on
11 GTSW's network because it does not switch that
12 traffic " Do you see that?
13 A I'm sorry Where is that language
14 again?
15 Q Page 11
16 JUDGE WALSTON This last
17 statement you talked about Page 13
18 MR McCOLLOUGH I'm sorry Page
19 13.
20 JUDGE WALSTON Very top
21 MR McCOLLOUGH First sentence
22 JUDGE WALSTON Very top of the
23 page.
24 A Okay That's what the sentence says
25 I think the evidence in that case demonstrated

0658

1 that CT Cube was in fact providing the switching
2 for that ISP. The Commission decided to ignore
3 that fact because they found that they were not
4 legally entitled to do that in this reciprocal
5 compensation decision
6 Q (By Mr McCollough) Now, ASAP has not
7 sought reciprocal compensation from CenturyTel,
8 has it?
9 A I haven't been involved in any
10 negotiations I don't think so, but I don't

11 know
12 Q The CT Cube decision was, in fact,
13 before the TSR decision, too, wasn't it -- the
14 FCC's TSR decision?
15 A I'm sorry I don't know We can look
16 at the dates
17 Q If you look at the back page of CT
18 Cube --
19 MR McCOLLOUGH I just realized I
20 may not have offered this yet I do offer it at
21 this time.
22 JUDGE WALSTON Any objections?
23 MS BROWN Yes, Your Honor I
24 don't think it's necessary to offer into
25 evidence these orders I'm not sure Some are
0659

1 being offered, some are not If the only
2 purpose is to cite this order in the brief, I
3 don't think it needs to be offered into evidence
4 so I'm just asking that for clarification
5 MR McCOLLOUGH That's fine I
6 realized that I had been asking a whole bunch of
7 questions directly from it, and I don't have to
8 have it in evidence
9 JUDGE WALSTON Just to make the
10 record clear though, you have been referring to
11 ASAP Exhibit No 40, even though it's not in the
12 record

13 MR McCOLLOUGH Yes
14 Q (By Mr McCollough) Mr Robinson, take
15 a look at the last page
16 A Of 40?
17 Q Yes
18 A Yes, sir
19 Q Does it look like this arbitration
20 award was issued sometime in 1999?
21 A Sometime in 1999; yes, sir
22 Q Would you agree with me that the TSR
23 issue was issued -- released June 21, 2002?
24 A Yes, sir
25 JUDGE WALSTON Mr McCollough,
0660

1 we're getting into the noon hour Are you
2 pretty close to finishing with Mr Robinson or
3 at a stopping point?
4 MR McCOLLOUGH I've got maybe 25
5 more minutes, and I will await your direction on
6 whether we break now or slog on through
7 JUDGE WALSTON Why don't we go
8 ahead and break? We'll take a break It's 10
9 after 12 So we'll resume at 1 15 Is that
10 okay with the parties?
11 (No response)
12 JUDGE WALSTON We'll go off the
13 record at this time
14 (Recess 12 10 p m to 1 22 p m)
15
16
17
18

9 to a specified area " So the Commission was
10 looking to see whether Brooks had authority to
11 provide service to a particular area Correct?
12 A Well, I'm not sure what they used as a
13 test to determine -- I mean, the first sentence
14 says they had general statewide authority to
15 provide service throughout the state, is the way
16 I interpret that Now, maybe they didn't have
17 facilities or equipment outside of Portland,
18 and, therefore, weren't providing any services
19 outside of Portland

20 Q Well, the next sentence under the
21 citation to the guidelines, "We have previously
22 found that Brooks does not have the authority
23 under its approved terms and conditions to
24 provide local exchange service in any location
25 in Maine outside its Portland area exchange "

0666

1 Do you see that?

2 MS BROWN Is the question can
3 the witness read that sentence? Is that the
4 question?

5 MR MCCOLLOUGH: I'm trying to
6 point him to a particular place and discuss it

7 MS BROWN. I'm not sure, Your
8 Honor, whether there's a question pending or
9 whether Mr. McCollough is asking him to read
10 that sentence

11 JUDGE WALSTON I think he's
12 asking does he see that Do you see the
13 statement he's referring to, Mr Robinson?

14 A I do see the statement

15 Q (By Mr McCollough) Then two sentences
16 down, "The utility cannot offer a service
17 without approved terms and conditions " Do you
18 see that there?

19 A Yes, sir

20 Q I'm trying to work you through to see
21 if we can agree on the logic of this

22 A I see that

23 Q Then the last full sentence on that
24 page, "Under current policies, consistent with
25 the central office code guidelines and the FCC

0667

1 delegation order, we will grant authority to
2 provide facilities-based local exchange service
3 only for areas where a LEC can demonstrate it
4 will be able to provide facilities-based service
5 within six months "

6 A That's the sentence, yes, sir

7 Q So isn't it fair to conclude that the
8 Maine Commission found that Brooks Fiber had not
9 made the demonstration necessary to obtain
10 specific authority to provide service in the
11 non-Portland areas because it hasn't shown it
12 had -- it will be able to provide
13 facilities-based service within six months?

14 A I think what the Maine Commission did
15 was come back and restrict the general statewide
16 authority that they had already granted to only

17 those areas where they could demonstrate the
18 ability to provide service within six months

19 Q Okay Now let's talk about ASAP ASAP
20 does have FCC authority to provide CMRS services
21 in Kyle, Pentress, Lockhart and San Marcos
22 Correct?

23 A I believe so -- CMRS services

24 Q ASAP has transmitters that cover those
25 areas Correct?

0668

1 A That's correct At least that's my
2 understanding I haven't seen the transmitters
3 but --

4 Q You also mentioned that you didn't know
5 if part of the reason for the Maine decision was
6 that Brooks didn't have any customers located in
7 the areas -- in the rate centers -- let me start
8 over

9 You also indicated that you didn't know
10 if part of the reason for the Maine decision was
11 Brooks didn't have any customers in the areas
12 where it had numbers?

13 A I don't know if that's part of the
14 reason

15 Q Well, if that is part of the reason,
16 you have agreed with me that ASAP has customers
17 in Kyle, Pentress, Lockhart and San Marcos
18 Right?

19 A I think that's a contention. I don't
20 know for that for sure I don't dispute that
21 fact -- CMRS customers

22 Q In your supplemental testimony, you
23 indicate twelve of ASAP's transmitters that were
24 disclosed in discovery are located in the Dallas
25 MTA Seven are in the Houston MTA, and one is

0669

1 located in the San Antonio MTA

2 A Yes, sir

3 Q You also provide a list on Exhibit WR-6
4 of the transmitters, the county, the MTA
5 Correct?

6 A Yes, sir

7 Q You mention Columbus, Sealy, Navasota
8 and Brenham Those are in the Houston LATA,
9 aren't they?

10 A I don't have a LATA map in front of me
11 I don't know, possibly I didn't specify LATAs
12 in here

13 Q None of Columbus, Sealy, Navasota or
14 Brenham are ELCS to San Marcos, are they?

15 A I don't believe so

16 Q Hallettsville is in the Corpus Christi
17 LATA, isn't it?

18 A I don't have a LATA map I'm sorry,
19 Mr McCollough

20 Q Hallettsville is not ELCS to San
21 Marcos, is it?

22 A I don't believe so I'm not real
23 familiar with their calling scopes down there so
24 I guess we could just say, subject to check, I

25 could agree with that statement
1
Q Saturn, do you know whether it's in the
2 San Antonio LATIA?
3 I don't know
4 Saturn is not ELCs to San Marcos, is
5 it?
6 Subject to check
7 And Bryan, that's in the old GTE SMA,
8 isn't it --
9 Yes, sir
10 -- or Bryan SMA?
11 It has its own SMA That's the one I
12 do know
13 I'm sorry?
14 That's the one I do know because it has
15 its own SMA
16 Bryan is not in the Austin LATIA, is it?
17 No, it's not
18 Bryan is not ELCs to San Marcos, is it?
19 I don't believe so
20 Milano, do you know whether it's in the
21 Maco LATIA?
22 I don't know
23 It's not ELCs to San Marcos Correct?
24 I don't know
25 (ASAP Exhibit No 42 marked)
0671
1 Q (By Mr McCollough) Have you been
2 handed what has been marked by the court
3 reporter as ASAP Exhibit 42?
4 Yes, sir
5 I know it's kind of hard to read, but
6 do you use Newton's Telecom Directory?
7 I don't have a copy, but I think I want
8 to get one.
9 Do you acknowledge that that is a
10 source of information and definitions relied on
11 by the telecommunications industry?
12 Oh, I don't know -- I guess it could
13 be, you know, we like to think -- in the
14 telecommunications industry, we like to rely
15 upon the definitions in the act or in the FCC
16 rules or in the Texas Commission's rules if we
17 can.
18 Well, the FCC sometimes relies on
19 Newton's, does it not?
20 A Do you have anywhere in mind that you
21 were --
22 Q Sure Take a look at what was marked
23 as ASAP Exhibit 31?
24 I have it
25 Q Turn to the second page and to Note
1 171, which is pretty much in the middle of the
2 page
3 A I'm sorry Could you tell me where I'm
4 looking again?
5 Q Yes, sir, the second page of ASAP
6 Exhibit 31

7 Yes, sir
8 Q Note 171, which is about the middle of
9 the page
10 Yes, sir
11 So the FCC has found reason to look to
12 Newton for a source of definitions, has it not?
13 That's what the order says It also
14 asks to -- refers the reader to the LERG
15 Q I understand I would like to visit
16 with you a little bit about just transmission
17 types -- just the amount of capacity for various
18 types of circuits in case we got into
19 difficulty, I was going to refer to Newton's,
20 but let's see A I'll, that's 1.5 megabytes a
21 second Correct?
22 That's the amount of bandwidth in a T1
23 Q It can be channelized, if necessary,
24 into 24 DSOs of either 56 or 64 kilobytes each
25 Right?
0673
1 A Yes, sir
2 Q The next increment typically used in
3 America, would you agree with me, is a -- is a
4 T3 or DS3?
5 The next step above, yes, sir
6 That's 44 T36 megabytes a second?
7 I think that's accurate
8 That's 28 T1s, isn't it?
9 A I think your math is accurate I'm not
10 sure
11 Q And 672 voice grade channels?
12 That's what it says in the dictionary
13 MR MCCOLLUGH I'm going to go
14 ahead and offer ASAP Exhibit 42 It may shorten
15 cross-examination.
16 JUDGE WALSTON Any objection?
17 MS BROWN Yes, Your Honor
18 There's a number of pages offered here We've
19 perhaps talked about some numbers that are at
20 the bottom of one page I'm not sure what
21 purpose for which this is being offered or what
22 definitions
23 I think Mr McCollough can point to a
24 specific definition and ask whether the witness
25 whether he agrees or doesn't agree with that
0674
1 definition, but I'm not sure what all the rest
2 of this has to do with or what it's being
3 offered for
4 MR MCCOLLUGH I can respond to
5 that Quite frankly, I was trying to shorten
6 cross-examination some, but the purpose of this
7 exhibit is I've copied the pages from Newton's
8 which describe and define the various levels of
9 capacity for circuit purposes starting with the
10 T1 and moving up to OCN
11 MS BROWN Your Honor, I think if
12 Mr McCollough could highlight those portions of
13 this exhibit that he wants to ask the witness
14 whether the witness is in agreement or not with